

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

* * * * *
DEANE AND POLYAK, et al., *
Plaintiffs, *
v. * **Case No. 24-C-04-005390**
CONAWAY, et al., *
Defendants. *
* * * * *

**MEMORANDUM AMICUS CURIAE OF THE MARYLAND CHAPTER OF THE
NATIONAL ASSOCIATION OF SOCIAL WORKERS**

INTEREST OF AMICUS CURIAE

One of the justifications advanced by the State in opposing marriage by same-sex couples is its asserted interest in encouraging procreation and child-rearing within the stable environment traditionally associated with marriage. The Maryland Chapter of the National Association of Social Workers submits this memorandum to inform the Court of the extensive scientific evidence proving that children raised by lesbians and gay men develop as well as children raised by heterosexual couples and, therefore, there is no legitimate basis for barring same-sex couples from marriage based on child-rearing. To the contrary, perpetuating the discrimination visited by the State on same-sex couples and their children threatens the stability and welfare of these children.

The National Association of Social Workers - Maryland Chapter has over 4,000 members and is one of 56 chapters throughout the United States and abroad. With over 153,000 members, the National Association of Social Workers (NASW) is the largest association of professional social workers. NASW's mission is to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies. NASW and the Maryland Chapter are committed to the elimination of prejudice and

discrimination based on sexual orientation, race, religion, or national origin, and will support the means necessary, including litigation, regulation, and political action, to promote equal rights for all people.

ARGUMENT

I. THE SCIENTIFIC EVIDENCE SHOWS THAT LESBIANS AND GAY MEN CAN BE AND ARE GOOD PARENTS WHO RAISE CHILDREN WHO ARE AS WELL-ADJUSTED AS THE CHILDREN OF HETEROSEXUAL COUPLES.

Over the last twenty-five years, a considerable body of social science research has established that lesbian and gay parents have parenting skills that are at least equivalent to those of heterosexual parents.¹ Studies consistently show the absence of differences between gay and

1. See, e.g., McCallum & Golombok, *Children Raised in Fatherless Families from Infancy: A Follow-up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence*, 45 J. Child Psych. Psychiatry, 407 (2004); David K. Flaks, et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 DEV. PSYCHOL. 105, 111 (1994) [hereinafter “*Choosing Motherhood*”]; Jerry J. Binger & R. Brooke Jacobsen, *Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers*, 23 J. HOMOSEXUALITY 99, 109 (1992); Frederick W. Bozett, *Gay Fathers*, GAY AND LESBIAN PARENTS 15 (1987); Susan Golombok, et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. CHILD PSYCHOL. PSYCHIATRY 551, 565, 567 (1983) (lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles;); Beverly Hoeffler, *Children’s Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 542-43 (1981). See also Henny M.W. Bos, et al., *Experience of Parenthood, Couple Relationship, Social Support, and Childrearing Goals in Planned Lesbian Mother Families*, 45 J. of Child Psychology and Psychiatry 755 (2004).

heterosexual parents on every meaningful measure of parenting ability.² For example, there are no differences in terms of child-rearing practices, commitment to parenting, self-esteem and psychological adjustment between lesbian mothers and heterosexual mothers.³ Similarly, studies have also shown no discernible differences between the parenting skills of gay fathers and heterosexual fathers.⁴ “Empirical evidence reveals . . . that gay fathers have substantial evidence

2. See, e.g., Cheryl A. Parks, Ph.D., *Lesbian Parenthood: A Review of the Literature*, 68 AM. J. OF ORTHOPSYCHIATRY 376, 380, 386 (1998) (a critical examination of 17 peer-reviewed studies published between 1980 and 1992 concluded that “few differences” in parenting exist between heterosexual and lesbian mothers); Flaks, *Choosing Motherhood*, *supra* note 1, at 111-12 (no differences between lesbian and heterosexual parents); Martha Kirkpatrick, *Clinical Implications of Lesbian Mother Studies*, 14 J. OF HOMOSEXUALITY 201, 210 (1987) (lesbian mothers no different from heterosexual mothers in parenting style, or social support system); K.F. McNeill, et al., *Families & Parenting: A Comparison of Lesbian & Heterosexual Mothers*, 82 PSYCHOL. REP. 59, 59 (1998) (finding no differences in parenting behaviors between lesbian and heterosexual mothers); Ellen C. Perrin, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341, 342 (2002) (“no differences” between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or “dealing with general problems of parenting”); Mary B. Harris & Pauline H. Turner, *Gay & Lesbian Parents*, 12 J. OF HOMOSEXUALITY 101, 112 (Winter 1985/86) (comparing lesbian and gay parents with heterosexual parents and finding no significant differences in the parents’ relationship with their children); Susan Golombok et al., *Children with Lesbian Parents*, 39 Dev. Psychology 20 (2003) (finding no significant differences between lesbian mothers and heterosexual mothers); Hunfeld et al., *Child Development and Quality of Parenting in Lesbian Families: No Psychosocial Indications for A-priori Withholding of Infertility Treatment*, 7 Human Reproduction Update 579 (2001) (concluding that empirical evidence was strong for the conclusion that in lesbian families the psychosocial development and the quality of parenting are not different from those in healthy heterosexual two-parent families).

3. Golombok, *supra* note 2; Perrin, *supra* note 2, at 342 (citing FIONA L. TASKER & SUSAN GOLOMBOK, *GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT* (1997)); Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, in 19 ADVANCES IN CLINICAL CHILD PSYCHOLOGY 235 (Thomas H. Ollendick & Ronald J. Prinz eds., 1995); Martha Kirkpatrick, et al., *Lesbian Mothers and Their Children: A Comparative Survey*, 51 AM. J. ORTHOPSYCHIATRY 545, 550 (1981)).

4. Binger & Jacobsen, *supra* note 1, at 109; Bozett, *supra* note 1, at 15; Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, in HOMOSEXUALITY AND THE FAMILY 137 (Frederick W. Bozett ed., 1989); Frederick W. Bozett, *Children of Gay Fathers*, in GAY AND LESBIAN PARENTS 47; Frederick W. Bozett, *Heterogeneous Couples in Heterosexual Marriages: Gay Men and Straight Women*, 8 J. MARITAL & FAM. THERAPY 81, 88 (1982); Brian Miller, *Gay Fathers and Their Children*, 28 FAM. COORDINATOR 544, 551 (1979).

of nurturance and investment in their parental role and no differences from heterosexual fathers in providing appropriate recreation, encouraging autonomy, or dealing with general problems of parenting.”⁵

Moreover, there is scientific consensus that children of lesbian and gay parents are as well-adjusted as children raised by heterosexual parents.⁶ Numerous studies conducted by respected child development researchers consistently show that children raised by lesbians or gay men demonstrate no deficits in intellectual development, social adjustment or psychological

5. Perrin, *supra* note 2, at 342 (footnotes and citations omitted).

6. See, e.g., Jennifer L. Wainwright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same Sex Parents*, 75 *Child Dev.* 6 (2004); Judith Stacey & Timothy J. Bilbarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *AM. SOCIOLOGICAL REV.* 159, 164 (2001) (surveying studies and reporting no deficits in children raised by lesbians concerning self-esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, sociability, hyperactivity or emotional difficulty); A Brewaeys et al., *Division of Labor Among Lesbian and Heterosexual Parents; Associations with Children's Adjustment*, 12 *J. Fam. Psychol.* 3 (1998); Charlotte J. Patterson & Raymond W. Chan, *Gay Fathers and Their Children*, in *TEXTBOOK OF HOMOSEXUALITY AND MENTAL HEALTH* 371, 388 (Robert P. Cabaj & Terry Stein eds., 1996); TASKER & GOLOMBOK, *supra* note 3; Flaks, *Research Issues*, *supra* note 1, at 33-34 (citing Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 *CHILD DEVELOPMENT* 1025, 1026-42 (1992)); Fiona L. Tasker & Susan Golombok, *Children Raised by Lesbian Mothers: The Empirical Evidence*, 21 *FAM. L.* 184, 186 (1991); Julie S. Gottman, *Children of Gay and Lesbian Parents*, 14 *MARRIAGE & FAM. REV.* 177, 186-92 (1990); Patricia J. Falk, *Lesbian Mothers: Psychological Assumptions in Family Law*, 44 *AM. PSYCHOLOGIST* 941, 943-47 (1989); David Kleber et al., *The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature*, 14 *BULL. AM. ACAD. PSYCHIATRY L.* 81, 86 (1986).

well-being in comparison to children raised by heterosexual parents.⁷ “The research is extraordinarily clear in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children.”⁸

There is no relationship between parental sexual orientation and measures of children’s cognitive ability or intelligence.⁹ “Across studies, no relationship has been found between parental sexual orientation and measures of children’s cognitive abilities.”¹⁰ Moreover, as leading researchers have concluded, no theories predict such a link.¹¹

Studies confirm that there are no differences in social or psychological functioning between children of lesbian and heterosexual parents. In fact, as one researcher concluded, “it

7. See Perrin, *supra* note 2, at 342-43 (citations omitted); Chan, *supra* note 6; TASKER & GOLOMBOK, *supra* note 3; Flaks, *Research Issues*, *supra* note 1, at 29; Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 18 J. HOMOSEXUALITY 123 (1989); Kirkpatrick, *supra* note 3, at 547-49. See also, *supra* note 6.

8. G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 198 (John C. Gansiorek & James D. Weinrich eds., 1991).

9. Flaks, *supra* note 1, at 109 (found no correlation between parental sexual orientation and the children’s scores on cognitive functioning tests); Richard Green, M.D., *et al.*, *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167, 174-79 (1986) (no difference in intelligence or cognitive functioning); Kirkpatrick, *et al.*, *supra* note 3, at 547 (same).

10. Stacey & Bilbarz, *supra* note 6, at 172.

11. *Id.*

was impossible to distinguish” at all between either group.¹² There is no difference in the rate of psychiatric, emotional or behavioral difficulty between the two groups of children.¹³ The lack of difference in emotional health and psychosocial adjustment holds true in studies comparing

12. Chan, *supra* note 6, at 445 (“It was impossible to distinguish between children born to and brought up by lesbian versus heterosexual parents,” and concluding that the results refute the idea that “only heterosexual parents can raise healthy children”); *see also* A. Brewaeys, *et al.*, *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 HUMAN REPRODUCTION 1349, 1356 (1997) (no differences in behavioral adjustment of children in comparison groups); Flaks, *Choosing Motherhood*, *supra* note 1, at 105, 112 (donor insemination study finding remarkable similarity between the children of lesbian and heterosexual parents with respect to behavioral adjustment).

13. Perrin, *supra* note 2, at 118 (“No differences were found between the children with lesbian and those with heterosexual mothers in the number or type of psychiatric difficulties”); (researchers found no significant differences between the children of lesbian mothers and those of heterosexual mothers with respect to emotional difficulties, conduct difficulties, unsociability, or hyperactivity); TASKER & GOLOMBOK, *supra* note 3, at 134-44 (in a longitudinal study, researchers found no difference between the children raised by a lesbian mother and those raised by a heterosexual mother with respect to anxiety or depression); Falk, *supra* note 6, at 944 (“[N]o evidence exists for a direct relationship between a mother’s sexual orientation and the mental health of her offspring”); Barbara McCandlish, *Against All Odds: Lesbian Mother and Family Dynamics*, in GAY AND LESBIAN PARENTS 23, 24 (Frederick W. Bozett ed., 1987) (observing that “children of gay and lesbian parents have no more frequent psychiatric problems and gender dysfunction than do the children of heterosexual parents”).

children raised from birth by lesbian mothers with children raised by heterosexual mothers,¹⁴ and those comparing children raised by divorced lesbian mothers with children raised by divorced heterosexual mothers.¹⁵ The research finds the same lack of difference involving children of gay

14. A. Brewaeys & E.V. Van Hall, *Lesbian Motherhood: The Impact on Child Development and Family Functioning*, 18 J. PSYCHOSOM. OBSTET. GYNECOL. 1, 13 (1997) (results of studies of children raised from birth by lesbian mothers show no effect on child development from different early childhood experiences with respect to the absence of a father and with respect to the presence of two lesbian mothers); Charlotte J. Patterson, *Lesbian Mothers and Their Children: Findings From the Bay Area Families Study*, in LESBIANS AND GAYS IN COUPLES AND FAMILIES: A HANDBOOK FOR THERAPISTS 420, 434 (J. Laird & R.J. Green eds., 1996) (results show “child development is proceeding normally”); Patterson, *supra* note 3, at 255 (“social competence among children with lesbian mothers was rated as normal”).

15. Gottman, *supra* note 6, at 189-190; Kirkpatrick, *supra* note 3, at 547-48 (researchers found no differences in the type or frequency of pathology “by any measure ... available” between the children living with divorced lesbian mothers and the ones living in similar households with divorced heterosexual mothers); Green, *supra* note 9, at 182 (children raised by a lesbian mother are not different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers); Ann O’Connell, *Voices From the Heart: The Developmental Impact of a Mother’s Lesbianism on Her Adolescent Children*, 63 SMITH & STUD. IN SOC. WORK 281, 284 (1993) (identifying numerous studies using various methods and samples across age groupings, which all report “no major differences in psychological or social development” between children of heterosexual and lesbian single parents); Cheri A. Pies, *Lesbians and the Choice to Parent*, 14 MARRIAGE & FAM. REV. 137, 140 (1989) (concluding that “children raised by lesbians have an equally good chance of developing into healthy, happy human beings as do children raised in heterosexual homes”); Huggins, *supra* note 7, at 131 (study found no significant statistical differences in self-esteem scores of adolescent children with divorced lesbian mothers and adolescent children with divorced heterosexual mothers).

males compared to children of heterosexual males.¹⁶

The research also is clear that children of lesbians and gay men do not suffer adverse effects as a result of social reactions to homosexuality. There are no significant differences in the quality of peer relationships between children of lesbian and heterosexual parents,¹⁷ and studies show strong self-esteem and assessments of popularity among adolescent children of lesbians and gays.¹⁸ Of course, “if ostracism, isolation, and teasing are problems for those children, neither the problem nor the solution can appropriately be located within these children or their families.”¹⁹ (This is also true when children are subjected to bias based on race, religion, or other factors.) In addition, the research shows that being raised by lesbian mothers and gay

16. Gottman, *supra* note 6, at 186 (“In general, none of the above studies on children of lesbian mothers and gay fathers reported negative effects on children”); Patterson & Chan, *supra*, (Children of homosexual fathers do not differ significantly from children raised in more traditional families.)

17. See, e.g., Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 *Child Dev.* 1025, 1033-34 (1992) (review of existing research demonstrates no significant differences in quality of peer relationships or popularity among peers). One study revealed that if children of gay and lesbian parents are teased, they are more likely than their peers to be teased about their family but that they are no more likely than other children to be teased. See K. Vanfraussen et al., *What Does it Mean for Youngsters to Grow Up in a Lesbian Family Created by Means of Donor Insemination?*, 20 *J. Reproductive & Infant Psychology* 237 (2002).

18. Huggins, *supra*, at 131-32 (1989) (no significant difference in self-esteem among the two groups of adolescents); Green, *supra*, at 178 (no significant differences between the children of lesbian and heterosexual mothers with respect to the children’s self-ratings of popularity or the mothers’ descriptions of the children’s popularity).

19. Perrin, *supra*, at 124.

fathers does not cause children to grow up to be gay.²⁰

Lesbian and gay parents are able to raise children who are as well adjusted as those of heterosexual parents because the factors associated with a child's positive adjustment have no relation to the parent's sexual orientation.²¹ These factors include, secure attachments between the parent and child, emotionally stable parents, an authoritative (not authoritarian) parenting style (*i.e.*, warmth, approval and emotional empathy coupled with a willingness to impose rules, structure and limits when necessary), and parents with realistic expectations, well-developed behavior management, coping and good listening skills, and a strong support network. Lesbian and gay parents can and do provide these parental attributes. Thus, it is not surprising that lesbian and gay parents are just as likely as heterosexual parents to be able to raise healthy, well-adjusted children.

II. ALL MAJOR PROFESSIONAL ASSOCIATIONS DEDICATED TO CHILDREN'S WELFARE AGREE THAT LESBIAN AND GAY PARENTS ARE AS CAPABLE AND SUCCESSFUL AT RAISING WELL-ADJUSTED CHILDREN AS HETEROSEXUAL PARENTS.

Given the scientific consensus regarding the parenting abilities of lesbians and gay men and the positive outcomes for their children, all of the major children's health and welfare organizations have issued policies and statements opposing restrictions on parenting by lesbians and gay men as both baseless and contrary to the best interests of children. Amicus National

20. See, e.g., Dorothy A. Green, Associate Clinical Professor, Department of Obstetrics and Gynecology, Yale University School of Medicine, *Reproduction in same-sex couples: quality of parenting and child development*, 17 *Curr. Opin. Obstet. Gynecol.* 309-312 (2005); Patterson, *supra*, at 1031-1032 (“[S]exual preference among offspring of gay and lesbian parents was found in every study to fall within normal bounds.”) There is some evidence indicating that children of gay or lesbian parents may be more comfortable acknowledging or acting on same-sex attraction if they have such feelings, which is hardly surprising. See Stacey & Biblarz, *supra*, at 170-171. Nonetheless, the majority of children raised by gay or lesbian parents, like most children raised by heterosexual parents, grow up to be heterosexual. *Id.*

21. See Patterson, *supra*; Brewaeys, *supra*; Michael E. Lamb, et al., *Parent-Child Relationships: Development in the Context of the Family*, in *DEVELOPMENTAL PSYCHOLOGY: AN ADVANCED TEXTBOOK* 32-42.

Association of Social Workers itself has determined that “[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is an absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies.”²²

The American Academy of Pediatrics (“AAP”), which represents over 50,000 pediatricians and offers guidance to parents on child-rearing issues, concluded, based on extensive review of peer reviewed research that the research does not reveal poor outcomes related to gay and lesbian parenting.²³ It concluded that children who grow up with gay or lesbian parents fare just as well in emotional, cognitive, social and sexual functioning as children whose parents are heterosexual.²⁴ The AAP adopted a policy statement supporting the legal adoption of children by same sex parents, concluding that there was no basis for denying legal parent status, which prevents the children from enjoying psychological and legal security benefits.²⁵ The AAP declared that:

[C]hildren who grow up with 1 or 2 gay and/or lesbian parents *fare as well* in emotional, cognitive, social, and sexual functioning as

22. National Association of Social Workers, “Policy Statement: Lesbian, Gay, and Bisexual Issues” in *Social Work Speaks* 193, 194 (1997). *See also* Lesbian, Gay and Bisexual Issues Policy (supporting the adoption of policies and legislation that protect the rights and well-being of children of gay, lesbian and bisexual people), available at <http://www.socialworkers.org/da/da2005/policies0505/documents/lgbissues.pdf>.

23. Committee on Psychological Aspects of Child and Family’s Health, *It’s About Their Children*, 110 *Pediatrics* 408-09 (2005).

24. Berman, *AAP Adoption Policy Based on What’s Best for Children*, AAP News, Vol. 20 (April 2002), 175, available at <http://aapnews.aappublications.org/cgi/content/full/20/4/175>.

25. COPACFH, *Coparent or Second - Parent Adoption by Same Sex Parents*, 109 *Pediatrics* 339-40 (2002).

do children whose parents are heterosexual . . . *No data have pointed to any risk to children as a result of growing up in a family with 1 or more gay parents.*²⁶

Indeed, according to the AAP, the keys to positive outcomes are the quality of the parent-child relationship and the quality of the parents' own relationship, not the gender or sexual orientation of the parents. The AAP explains:

Children in *all family constellations* have been described by parents and teachers to have more behavioral problems when parents report more personal distress and more dysfunctional parent-child interactions. In contrast, children are rated as better adjusted when their parents report greater relationship satisfaction, higher levels of love, and lower interparental conflict regardless of their parents' sexual orientation. Children are apparently more powerfully influenced by family processes and relationships than by family structure.²⁷

The American Psychological Association, representing more than 155,000 psychologists, concluded that “[n]ot a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children’s psychosocial growth.”²⁸

The American Psychiatric Association also has been unequivocal: “Numerous studies have shown that the children of gay parents are as likely to be healthy and well-adjusted as

26. Ellen C. Perrin, M.D. & the Committee on Psychological Aspects of Childhood and Family Health, American Academy of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 341-42 (2002) available at <http://pediatrics.aappublications.org/cgi/reprint/109/2/341> [hereinafter “Pediatric Report”] (emphasis supplied); see also Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *PEDIATRICS* 339, 339 (2002) (policy statement accompanying Technical Report). Through its policies and educational materials, the AAP offers guidance to parents and others on child-rearing issues.

27. Pediatric Report, *supra* note 26, at 143 (emphasis supplied).

28. American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* (2005), available at <http://www.apa.org/pi/parent.html>.

children raised in heterosexual households.”²⁹ So too has the American Psychoanalytic Association: “[g]ay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and accept the same responsibilities as heterosexual parents.”³⁰

The American Academy of Child & Adolescent Psychiatry, which represents over 6,500 psychiatrists concurs. “Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to heterosexual parents, show no greater degree of inability in the parental relationship or developmental dysfunction in children.” American Academy of Child & Adolescent Psychiatry, “Policy Statement: Gay, Lesbian, and Bisexual Parents (June 1999).”³¹

The American Medical Association (the “AMA”) has resolved to “support legislative and other efforts to allow the adoption of a child by the same-sex partner, or opposite sex non-married partner, who functions as a second parent or co-parent to that child.” American Medical Association House of Delegates, Resolution 204 (A-04) (Apr. 29, 2004). The AMA drew no distinction between the abilities of same-sex and opposite-sex partners as parents, but instead concluded that “[h]aving two fully sanctioned and legally defined parents promotes a safe and nurturing environment for children, including psychological and legal security.” *Id.*

As the Child Welfare League of America has concluded, the exclusion of gay men and lesbians from the pool of those eligible for adoption would undermine the best interests of children. Lofton v. Secretary, Florida Department of Children and Families, No. 04-478, Motion

29. American Psychiatric Association, Adoption and Co-Parenting of Children by Same-Sex Couples: Position statement available at <http://www.aglp.org/pages/position.html#Anchor-Adoption-49575> (Nov. 2002).

30. American Psychoanalytic Association, “Position Statement on Gay and Lesbian Parenting” (May 16, 2002), available at <http://www.apsa.org/ctf/cgli/parenting.htm>.

31. Available at <http://www.aacap.org/publications/policy/ps46.htm>.

of the Child Welfare League of America to File Brief Amicus Curiae (S. Ct.) The policy of the North American Council on Adoptable Children is that: “[c]hildren should not be denied a permanent family because of the sexual orientation of potential parents. All prospective foster and adoptive parents, regardless of sexual orientation, should be given fair and equal consideration.”³²

Indeed, amici are unaware of any authoritative child-welfare organization that has taken a contrary position. Every prominent pediatric, psychological, psychiatric and child welfare organization to address the issue has concluded that there is no child welfare basis for concluding that gay and lesbians are not as capable as heterosexuals of being parents and that children of gay and lesbian parents suffer no disadvantage due to their parents’ sexual orientation.³³

III. THE STATE OF MARYLAND RECOGNIZES THAT LESBIANS AND GAY MEN CAN AND DO PROVIDE A STABLE ENVIRONMENT FOR RAISING CHILDREN.

The State of Maryland, by its policies and practice, recognizes that lesbians and gay men can make fine parents. It is State policy to ensure that parentless children who need to be adopted should be provided “stable homes that protect their safety and health,” Md. Code, § 5-

32. North American Council on Adoptable Children, April 9, 2005 policy statement, available at http://www.nacac.org/pub_statements.html#gay.

33. Some opponents of same-sex marriage allege that gay men pose a greater risk of child molestation than do heterosexual men. This baseless myth has long been proven false. Among pedophiles, many are neither, having no sexual attraction to adults of either gender. See D. Finkelhor & S. Araji, “Explanations of Pedophilia: A Four Factor Model,” 22 J Sex Res 145, 161 (1986), cited in Gregory M. Herek, “Myths About Sexual Orientation: A Lawyer’s Guide to Social Science Research,” 1 L & Sexuality 133, 153-54 (1991). Of those offenders against children who also have some sexual attraction to adults, that attraction is more likely to be different-sex attraction. Indeed, a study of 175 men convicted of child sex abuse found that of the 92 who had any attraction to adults, the overwhelming majority were attracted to women, regardless of the gender of the children these men abused. A.N. Groth & H.J. Birnbaum, “Adult Sexual Orientation and Attraction to Underage Persons,” 7 Archives Sexual Behav 175, 180 (1978); see also Carole Jenny et al., “Are Children at Risk for Sexual Abuse by Homosexuals?,” 94 Pediatrics 41, 44 (1994) (study of children seen in one-year period at Denver children’s hospital found that less than 1 percent of adult offenders were “potentially” gay or lesbian.)

303(b)(1), and the State “permit[s] adoption only by individuals who are fit for the responsibility,” *id.* at § 5-303(b)(3). *See also* June 9, 2000 letter to Hon. Sharon Grosfeld from Ass’t Atty Gen. Kathryn M. Rowe (Exh. 1 attached). The State, recognizing that lesbians and gay men are fit for that responsibility, routinely allows children to be placed in foster care and for adoption by lesbians and gay men. *See, e.g.*, Williams Decl. ¶ 10; Deane Decl. ¶ 13; Kebler-Kaye Decl. ¶¶ 9, 15; Mozzelle Decl. ¶ 9. Indeed, the State prohibits private adoption agencies from delaying or denying the placement of a child for adoption on the basis of the prospective adoptive parent’s sexual orientation. C.O.M.A.R. 07.05.15(c)(2). (“The agency may not deny an individuals application to be an adoptive parent because . . . [o]f the applicant’s or adoptive child’s race, color, culture, national origin, sexual orientation, or ethnic heritage.”)

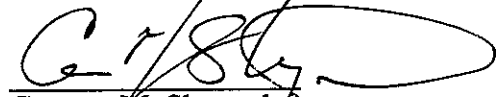
CONCLUSION

The denial of civil marriage protections to lesbian and gay male couples not only fails to advance children’s interests, it works directly against children. Marriage provides legal, social and economic support and fosters stability in families. Children whose parents are barred from marrying are deprived of these important benefits.

The Massachusetts Supreme Judicial Court recognized the illogic of Maryland’s asserted justification for the marriage exclusion, noting that the exclusion of lesbian and gay couples from marriage “cannot plausibly further” state policy of protecting children’s welfare. Goodridge v. Dep’t of Public Health, 798 N.E. 2d 941, 962 (Mass. 2003). Rather, the Court concluded, “[e]xcluding same-sex couples from civil marriage will not make children of opposite-sex marriages more secure, but it does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a ‘stable family structure . . .’” *Id.* at 964. As the Vermont Supreme Court put it: “if anything, the exclusion of same-sex couples from

the legal protections incident to marriage exposes their children to the precise risks that the State argues the marriage laws are designed to secure against.” Baker v. State, 744 A.2d 864, 882 (Vt. 1999).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Shepard', written over a horizontal line.

Carmen M. Shepard
Buc & Beardsley
919 Eighteenth Street, N.W.
Suite 600
(202) 736-3600

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

CARMEN M. SHEPARD
DONNA HILL STATION
Deputy Attorneys General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

RICHARD E. ISRAEL
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

June 9, 2000

The Honorable Sharon Grosfeld
9906 Old Spring Road
Kensington, Maryland 20895

Dear Delegate Grosfeld:

You have asked for advice concerning the state of the law in Maryland concerning adoption by unmarried couples, including homosexual couples. This question involves two facets: adoption of a child who is not related to either partner and adoption of the natural child of one of the partners. It is my conclusion that Maryland law permits adoption of a child by two unmarried persons who make up a household.¹ It is also my view that Maryland law does not prevent adoption by homosexual couples. Finally, it is my view that, by petitioning jointly, a couple may adopt the natural child of one partner without terminating that partner's parental rights.

Maryland law provides that "[a]ny adult may petition a court to decree an adoption." Family Law Article, § 5-309(a). The law further provides that "[a] court may not deny a petition for adoption solely because the petitioner is single or does not have a spouse." FL § 5-309(b). Thus, it is clear that marriage is not a requirement for adoption. Moreover, because Maryland law provides that "the singular always includes the plural, and vice versa, except where such construction would be unreasonable," Article 1, § 8, Maryland Code Annotated, it is clear that adoption is not limited to unmarried persons who act individually. The Court of Special Appeals has allowed adoption by an unmarried couple of the natural child of the woman on a joint petition. *In re Adoption No 90072022/CAD*, 87 Md.App. 630 (1991). Moreover, adoptions by two unmarried persons have been allowed by the Circuit Courts of the State. *See, Ex Parte De Silva*, 6 MFLM Supp. 37 (Case No. A-93-251, Circuit Court for Anne Arundel County, Cawood, May 5, 1994)(Adoption of child by twin sisters) and *Ex Parte in the Matter of the Petition of D.L.G. and M.A.H. for the Adoption of Two Children*, (Case No. 95179001/CAD, Circuit Court for Baltimore City, O'Ferrall Friedman, June 27, 1996)(Joint petition for adoption by lesbian couple of the natural children of each of them). Other states also have interpreted similar statutory language to permit adoption by unmarried couples. *In re M.M.D.*, 662 A.2d 837 (D.C. 1995); *In re Petition of K.M. and D.M.*, 653 N.E.2d 888

¹ For purposes of convenience, persons adopting together in this way will be referred to as a "couple," but this advice is not intended to be limited to cases where the two persons involved would be considered a couple. For example, in *Ex Parte De Silva*, 6 MFLM Supp. 37 (Case NO. A-93-251, Circuit Court for Anne Arundel County, Cawood, May 5, 1994), the Court allowed twin sisters who lived together to adopt a child.

The Honorable Sharon Grosfeld
June 9, 2000
Page 2

(Ill.App. 1995); *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993), *Adoption of B.L.V.D.*, 528 A.2d 1271 (Vt. 1993).

No Appellate case in Maryland has addressed the propriety of adoption by homosexual persons. However, such an adoption has been allowed in at least one circuit court case. Moreover, cases decided by the Court of Special Appeals in the area of visitation support the conclusion that homosexuality of the adopting couple would not be a bar to adoption. My research reveals that permitting such adoptions is the majority rule around the country.

Ex Parte in the Matter of the Petition of D.L.G. and M.A.H. for the Adoption of Two Children, (Case No. 95179001/CAD, Circuit Court for Baltimore City, O'Ferrall Friedman, June 27, 1996), raised the issue of whether Maryland law barred the adoption of children on a joint petition by the natural mothers of the children involved. The Court noted that the statute does not prohibit adoption by same-sex partners, but that Maryland law does not protect homosexuals from discrimination in adoption cases. Slip. op. at 6. The Court then reasoned that because adultery, which also concerns sexuality and morality, does not establish unfitness for the custody of children, sexual orientation "should not be a bar to finding parents fit but should be considered only to the extent that it may have a negative impact on the children." Slip. op. at 8.

While the appellate courts have not addressed the issue of homosexuality as a factor in adoption, the Court of Special Appeals has looked at the issue of custody and visitation by homosexual parents in three cases. In *S.F. v. M.D.*, ___ Md.App. ___ (May 2, 2000), the Court had before it a case involving a request for visitation by the lesbian ex-partner of the child's mother. The Court did not address the issue of homosexuality as a bar, but accepted that such visitation was appropriate. Furthermore, the Court found that the petitioner was a *de facto* parent, giving her preferred status in her attempt to win visitation. However, because visitation had given rise to behavioral problems with the child the Court upheld the trial court's denial of visitation. In *Boswell v. Boswell*, 118 Md.App. 1 (1997) the Court had before it a case in which the trial court had imposed conditions on visitation with the father, including a bar on the presence of the father's homosexual lover or "anyone having homosexual tendencies or such persuasions, male or female, or anyone that the father may be living with in a non-marital relationship." The Court held that this restriction was unreasonable on its face, as it "would require inquiry of the sexual orientation of every person with whom the children might come in contact, for instance, at a shopping mall or on a casual outing or picnic and would not necessarily be within the appellants' control," and further noted that there is no longer a presumption in Maryland that exposure to a parent's paramour is bad for a child. Finally, in *North v. North*, 102 Md.App. 1 (1994), the Court remanded a visitation case in which restrictions had been placed on visitation by the children with their homosexual, HIV positive father. The restrictions allowed visitation, but not overnight or extended. The Court found that these restrictions did not follow logically from the facts found by the trial court and that they had no reasonable relationship to their announced objective, which was apparently, to prevent the children from witnessing homosexual displays of affection and the homosexual lifestyle, though, as the Court of Special Appeals pointed out, the trial court had not indicated what those terms meant.

The Honorable Sharon Grosfeld

June 9, 2000

Page 3

These cases, taken together, indicate an approach of the part of the Court of Special Appeals that treats the sexual orientation of the parties as irrelevant in issues of visitation and custody unless some specific harm to the child is demonstrated.² Therefore, it is unlikely that the sexual orientation of adopting parents would be held to bar an adoption in the ordinary case. Allowing adoption by homosexual couples would be consistent with the conclusion reached in most states to have considered the issue, outside of those that have statutory bars on such adoptions. See, *In the Matter of Jacob*, 660 N.E.2d 397 (1995); *Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J.Super. 1995); *In re Petition of K.M. and D.M.*, 653 N.E.2d 888 (Ill.App. 1995); *Adoption of B.L.V.D.*, 528 A.2d 1271 (Vt. 1993).

The above cases establish that in the ordinary case, an unmarried couple may adopt a child regardless of the sexual orientation of the couple. An additional problem arises, however, in cases where the child to be adopted is the child of one of the partners. Family Law Article § 5-308(b) provides that an individual adopted is the child of the adopting people and that the natural parents are relieved of duties, responsibilities and parental rights with respect to the adopted child. Estates and Trusts Article, § 1-207(a) repeats the sense of these provisions, but makes an exception where the adoption is by the spouse of a natural parent, in which case the child is still to be considered the child of that natural parent.

Many states have similar provisions, and the issue has arisen in these states as to whether adoption by one an unmarried partner of a natural parent would terminate the parental rights of the natural parent. The courts that have considered this issue have not reached consistent decisions. Some courts have given a strict construction to these provisions, holding that the stepparent exception is the only applicable exception and that an unmarried partner is not a stepparent. *In re Adoption of Jane Doe*, 719 N.E.2d 1071, 1073 (Ohio App. 1998); *Adoption of T.K.J. and K.A.K.*, 931 P.2d 488 (Colo.App. 1996). Other courts, however, have read the law to allow an unmarried partner to adopt without terminating parental rights, finding that a strict reading would go against the purposes of the adoption statute and would lead to absurd results. *In the Matter of Jacob*, 660 N.E.2d 397 (1995); *Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J.Super. 1995); *In re M.M.D.*, 662 A.2d 837 (D.C. 1995); *Matter of Adoption of Caitlin*, 622 N.Y.S.2d 835 (Fam. 1994); *Matter of Adoption of Child by J.M.G.*, 632 A.2d 550 (N.J.Super.Ch. 1993); *Adoption of B.L.V.D.*, 528 A.2d 1271, 1272 (Vt. 1993) (“We hold that when the family unit is comprised of the natural mother and her partner, and the adoption is in the best interests of the children, terminating the natural mother’s rights is unreasonable and unnecessary.”); *In the Matter of the Adoption of Evan*, 583 N.Y.S.2d 997 (Sur. 1992).

² This view puts Maryland in with the most tolerant of states. However, recent cases illustrate that this tolerance is the modern trend. See, *T.B. v. L.R.M.*, ___ A.2d ___, 2000 WL 714409 (Pa.Super. June 5, 2000); *V.C. v. M.J.B.*, 748 A.2d 539 (N.J., April 6, 2000); *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999). Other cases concerning custody and visitation are collected at Annot., *Custodial Parent’s Homosexual or Lesbian Relationship with Third Person as Justifying Modification of Child Custody Order*, 65 A.L.R.5th 591 (1999); Annot., *Initial Award or Denial of Child Custody to Homosexual or Lesbian Parent*, 62 A.L.R.5th 591 (1998), and Annot., *Visitation Rights of Homosexual or Lesbian Parent*, 36 A.L.R.4th 997 (1985).

The Honorable Sharon Grosfeld

June 9, 2000

Page 4

The Maryland Court of Appeals has not had the issue of the termination provision before it in the context of an adoption by the partner of a natural parent, but has given the provision a restrictive reading in other situations. In *Bridges v. Nicely*, 304 Md. 1 (1985), the Court held that the natural father of a child born out of wedlock could adopt the child where it was possible that the adoption could convey benefits that were not available through the legitimation procedure. However, the court held that the grant of the adoption petition of the father would divest the parental rights of the mother. Therefore, while holding that such an adoption was permissible, the Court indicated that the termination of the rights of the mother would weigh heavily against the grant of the petition.

Under the *Bridges* case, it would appear that the Court would hold that adoption by the unmarried partner of the parent of the child would divest the original parent of parental rights.³ However, it is my view that this result could be avoided if the natural parent and his or her partner join in the petition for adoption. This is the method that was used in *In re Adoption No 90072022/CAD*, 87 Md.App. 630 (1991), where the Court of Special Appeals allowed a woman and her fiancé to adopt the woman's child with no suggestion that the woman's parental rights would be endangered. And in *Ex Parte in the Matter of the Petition of D.L.G. and M.A.H. for the Adoption of Two Children*, (Case No. 95179001/CAD, Circuit Court for Baltimore City, O'Ferrall Friedman, June 27, 1996) a joint petition for the adoption by lesbian partners of each others children, the Court held that the termination provision would not apply, noting that it would achieve the precise opposite of the intention of the parties in seeking the adoption. See also, *Adoption of Tammy*, 619 N.E.2d 315, 321 (Mass. 1993) ("The legislature obviously did not intend that a natural parent's relationship to its child be terminated when the natural parent is a party to the adoption petition.").

It is my view that Maryland law permits a parent to join in a petition to adopt his or her own child. The Court recognized in the *Bridges* case that a natural father may adopt his own child, at least where the adoption may provide greater benefits to the child than are available through other legal avenues. Moreover, while the Court appeared to place limits on the ability of a parent to adopt his or her own child in *Green v. Sollenberger*, 338 Md. 118 (1995), a close reading of that case shows that it should not be read to bar such adoptions in all cases outside of the *Bridges* situation, or even in all cases where the child was not illegitimate, but rather to bar adoption by a parent in those cases where the adoption would act to the detriment rather than to the benefit of the child. In *Sollenberger*, the effect of the adoption was that the child would be left with one parent instead of two and that parent had shown herself unable to support him. This situation is very different from one in which the partner of parent seeks to join the parent in parenting, thus giving the child an additional source of support. Therefore, it is my view that *Sollenberger* would not prevent a parent from joining in an adoption petition for his or her own child in order to permit the parent's partner to adopt the child without terminating the parental rights of the parent.

³ However, in *Ex Parte De Silva*, 6 MFLM Supp. 37 (Case NO. A-93-251, Circuit Court for Anne Arundel County, Cawood, May 5, 1994), the Court permitted a person to adopt the adopted child of her twin sister, relying on *Adoption of B.L.V.D.*, 528 A.2d 1271, 1272 (Vt. 1993) to support the conclusion that it would be irrational to hold that rights would terminate in that situation. The opinion of the Court in that case does not mention the *Bridges* case.

The Honorable Sharon Grosfeld
June 9, 2000
Page 5

In conclusion, it is my view that Maryland law permits adoption by unmarried persons regardless of their sexual orientation. It is also my view that Maryland law would not require the termination of parental rights of a natural parent who joins in a petition for the adoption of his or her own child by a partner.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn M. Rowe', with a long horizontal line extending to the right.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
grosfeld03.wpd

CERTIFICATE OF SERVICE

I certify that a true copy of annexed Motion at the National Association of Social Workers Maryland Chapter for Leave to File Memorandum Amicus Curiae in Support of Petitioners, the Memorandum Amicus Curiae and attached exhibits were mailed, by first class mail, postage prepaid, on June 14, 2005, to the following:

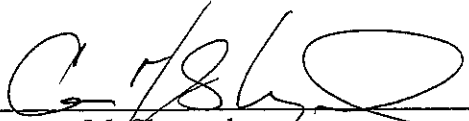
J. Joseph Curran, Jr.
Margaret Ann Nolan
Steve Sullivan
Office of the Attorney General
200 St. Paul Place -20th Floor
Baltimore, Md. 21202

Andrew H. Biada
Caroline D. Ciralo
Rosenberg Martin Funk Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, MD 21201

Kenneth Y. Choe
James D. Esseks
American Civil Liberties Union Foundation
Lesbian and Gay Rights Project
125 Broad Street
New York, NY 10004

David R. Rocah
American Civil Liberties Union Foundation
of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211

Arthur B. Spitzer
American Civil Liberties Union Foundation
of the National Capital Area
1400 20th Street, NW, #119
Washington, DC 20036


Carmen M. Shepard