

**Court of Appeals  
STATE OF NEW YORK**

Appellate Division Docket No. 6598, 6599  
New York County Clerk's Index No. 103434/2004

**DANIEL HERNANDEZ and NEVIN COHEN, LAUREN ABRAMS and DONNA  
FREEMAN-TWEED, MICHAEL ELSASSER and DOUGLAS ROBINSON, MARY JO  
KENNEDY and JO-ANN SHAIN, and DANIEL REYES and CURTIS WOOLBRIGHT,**

*Plaintiffs – Appellants,*

*-against-*

**VICTOR L. ROBLES, in his official capacity as City Clerk of the City of New York,**

*Defendant – Respondent.*

Appellate Division Docket No. 98084  
Albany County Clerk's Index No. 1967-04

**SYLVIA SAMUELS, DIANE GALLAGHER, HEATHER McDONNELL, CAROL SNYDER,  
MAY TRIPI, JEANNE VITALE, WADE NICHOLS, HARGN SHEN, MICHAEL HAHN,  
PAUL MUHONEN, DANIEL J. O'DONNELL, JOHN BANTA, CYNTHIA BINK, ANN  
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JOHN WESSEL, WILLIAM O'CONNOR, MICHELLE CHERRY-SLACK, and MONTEL  
CHERRY-SLACK,**

*Plaintiffs-Appellants,*

*-against-*

**THE NEW YORK STATE DEPARTMENT OF HEALTH and the STATE OF NEW YORK,**

*Defendants-Respondents.*

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**BRIEF OF AMICI CURIAE THE ASSOCIATION TO BENEFIT CHILDREN, THE AIDS  
CENTER OF QUEENS COUNTY, THE CHILD WELFARE FUND, THE NATIONAL  
ASSOCIATION OF SOCIAL WORKERS, THE NATIONAL ASSOCIATION OF SOCIAL  
WORKERS – NY CHAPTER, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS  
– NYC CHAPTER and THE LESBIAN & GAY COMMUNITY SERVICES CENTER INC.**

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## CORPORATE AFFILIATION STATEMENT

In accordance with 22 NYCRR 500.13(a), the following are the corporate parents, subsidiaries and affiliates of the proposed *amici curiae*:

### Proposed Amicus

### Parents, Subsidiaries and Affiliates

The Association to Benefit Children

No parents or subsidiaries.  
Affiliate: The Association to Benefit Children Housing Development Finance Corporation.

The AIDS Center of Queens County

None

The Child Welfare Fund

The Child Welfare Fund is administered by the Fund for Social Change, a non-profit corporation with no parent, affiliates or subsidiaries

The National Association of Social Workers, The National Association of Social Workers - NY Chapter, the National Association of Social Workers – NYC Chapter

No parents or affiliates.  
Subsidiaries: the National Association of Social Workers Political Action for Candidate Election, the National Association of Social Workers Foundation, the National Association of Social Workers Legal Defense Fund and the National Association of Social Workers Insurance Trust.

The Lesbian & Gay Community Services Center Inc., d/b/a the Lesbian, Gay, Bisexual & Transgender Community Center of New York City

None

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## INTEREST OF AMICI CURIAE

The **Association to Benefit Children** (“ABC”) is a non-profit child welfare organization, headquartered in New York City, which creates and sustains cost-effective, enriched model programs for homeless, disabled and medically fragile children and their families.

The **AIDS Center of Queens County** (“ACQC”) is a non-profit community based organization that enhances the quality of life for individuals and their families infected, affected and at risk for HIV/AIDS and other related conditions. ACQC provides comprehensive services, including legal services for families with minor children. ACQC helps children who have only one legally recognized parent by helping parents make future care and custody arrangements to establish a legal connection between the children and their caregivers who are not legally recognized parents.

The **Child Welfare Fund** (“CWF”), which was established by an anonymous donor in 1991 and is administered by the Fund for Social Change provides grants to improve the well being of children and families in New York City. The CWF assists organizations in two areas: system reform in child welfare, and direct services to help individual children and families. System reform grants support projects that increase the influence of parents and youth in the child welfare system, or improve or expand existing programs and structures, particularly family supports. Direct service grants support projects

that reduce the risk of placement into foster care, assist children and youth when they leave foster care, and increase universal eligibility for services.

The **Lesbian and Gay Community Services Center, Inc. d/b/a The Lesbian and Gay, Bisexual & Transgender Community Center of New York City** (“the Center”) supports Lesbian, Gay, Bisexual and Transgender (“LGBT”) organizations, institutions and culture; cares for LGBT individuals and groups in need; educates the public and the LGBT community; and empowers LGBT individuals and groups to achieve their fullest potential. The Center's programs include Center Kids, a model for LGBT family organizing. Center Kids promotes the legitimacy and visibility of LGBT families. More than 2,500 families in the tristate area partake in Center Kids activities.

The **National Association of Social Workers** (“NASW”) was established in 1955 as a non-profit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world, with 153,000 members. The **NASW New York City Chapter** has approximately 10,000 members and the **NASW New York Chapter** has approximately 12,000 members. NASW concerns itself, among other things, with the welfare of children regardless of the sexual orientation of the children's parents; this concern is fully consistent with its policy statement on gay issues adopted in 1977 (and revised and expanded in 1987, 1993 and 1996) that prohibits social workers from discriminating on the basis of sexual

orientation. In 2004, NASW reaffirmed its policy supporting marriage for same-sex couples.

## **INTRODUCTION**

Amici do not wish to burden this Court with further argument concerning the constitutionality of excluding same-sex couples from marriage. The main briefs in the cases *sub judice* have amply – and ably – done so. Rather, Amici wish to draw the Court’s attention to a critical aspect of the debate: the health and welfare of the children of same-sex parents living in New York State. Amici contend that the institution of marriage confers protections upon children to which all children, whether of gay or straight parents, should be entitled. Therefore, Amici respectfully submit that the interests of children of same-sex parents would be best served by providing them and their families with the rights and protections enjoyed by their peers in families of married opposite-sex parents.

## **PRELIMINARY STATEMENT**

For more than 80 years, New York’s law of domestic relations, as it pertains to children, has operated upon a cardinal principle: the paramount consideration of both fact-finders and interpreters of the law should be the best interests of the child. Many same-sex couples in New York choose to raise children together; Amici submit that it would be in the best interests of the thousands of children of these unions to allow their parents to marry. This is so

because marriage provides a host of rights, privileges and protections from which children benefit economically, socially, and psychologically.

This significant group of children is denied these protections because their parents – same-sex couples – are not allowed to marry. The most recent U.S. Census reported that 46,490 households in New York are comprised of same sex couples.<sup>1</sup> More than a quarter of these households include minor children.<sup>2</sup> Amici submit that these children are entitled to the same protections that their counterparts from opposite-sex families receive simply by virtue of their parents' being allowed to marry.

As discussed below, children of married couples are eligible for a panoply of material and economic benefits accruing from either parent, such as health care, disability and social security payments, in the event of a parent's death. Children of same-sex parents, however, are at risk of being denied the same benefits because one partner in the same-sex relationship is not legally recognized as a parent. Children of same-sex parents deserve to have and receive the same legal protections afforded to children of opposite-sex married couples. They are entitled to have the State recognize the family structure in which they live.

The benefits to children of their parents being married extend beyond legal and economic rights. Research has demonstrated both that children of

same-sex parents benefit from the love and support of two married parents (regardless of their gender), and that conferring marital status upon such relationships would only enhance the health and welfare of such children. The protections of the institution of marriage clearly enhance such stability. But in this State, children of same-sex parents are denied the emotional and psychological protections that come with being part of a married family unit.

Moreover, to the extent that our society continues to stigmatize same-sex relationships, children of parents in such relationships are subject to and at risk of such stigmatization. Permitting same-sex couples to marry would have the collateral effect of reducing the stigmatization to children of same-sex couples.

### **ARGUMENT**

For the better part of a century, this Court and lower courts in this State have consistently endorsed the principle that the primary consideration of domestic relations law, to the extent that it orders the lives of children, is the best interests of the child. *In re Jacob*, 86 N.Y.2d 651 (1995) (holding that adoption of a child by a same-sex parent was in the child's best interests); *Finlay v. Finlay*, 240 N.Y. 429, 433 (1925) (Cardozo, J.) (stating that the court must act "as *parens patriae* to do what is best for the interest of the child"); *Martin v. Martin*, 45 N.Y.2d 739, 741 (1978); *Braiman v. Braiman*, 44 N.Y.2d 584, 591 (1978); *Obey v. Degling*, 37 N.Y.2d 768, 769 (1975) (stating that in a

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<sup>1</sup> Tavia Simmons & Martin O'Connell, *Census 2000 Special Reports: Married-Couple and Unmarried-Partner Households: 2000* (Feb. 2003), available at

custody proceeding, “the first and paramount concern of the court is and must be the welfare and the interests of the child”); *De Pinto v. De Pinto*, 98 A.D.2d 985, 985 (4th Dep’t 1983); *Stanat v. Stanat*, 93 A.D.2d 114, 116 (1st Dep’t 1983); *Chirumbolo v. Chirumbolo*, 75 A.D.2d 992 (4th Dep’t 1980); *Markus v. Markus*, 75 A.D.2d 747 (1st Dep’t 1980); *La Macchia v. La Macchia*, 66 A.D.2d 768, 768 (2d Dep’t 1978); *Perry v. Fiumano*, 61 A.D.2d 512, 517 (4th Dep’t 1978); *O’Neill v. O’Neill*, 60 A.D.2d 571 (2d Dep’t 1977); *In re Tanya Alexis G.*, 273 A.D.2d 19 (1st Dep’t 2000) (terminating parental rights of biological parents so as to free the child for adoption by her foster parents considered to be in the best interests of the child); *In re Emilio R.*, 293 A.D.2d 27 (1st Dep’t 2002) (holding that the trial court’s denial of adoption was not in the best interests of the child); *In re Evan*, 153 Misc. 2d 844, 851 (N.Y. Surrogate Ct. 1992) (lesbian life partner of the child’s biological mother may adopt child, holding “decisions shall be made in relation to the best interests of adoptive children”); *In re Adoption of Camilla*, 163 Misc. 2d 272, 280 (N.Y. Fam. Ct. 1994) (approving a same-sex adoption) (stating that “the adoption statute historically has been most liberally and beneficently applied in order to assure the best interests of the child”); *In re Adoption of Caitlin*, 163 Misc. 2d 999 (N.Y. Fam. Ct. 1994) (approving same-sex couple’s adoption of a child, holding that “decisions are to be made solely in the best interests of the adoptive

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<http://www.census.gov/prod/2003pubs/censr-5.pdf>.

<sup>2</sup> Gary J. Gates & Jason Ost, *The Gay & Lesbian Atlas* (2004), at 129.

children”); *In re Adoption of Joseph*, 179 Misc. 2d 485 (N.Y. Surrogate Ct. 1998) (holding that an unmarried couple may adopt a child where adoption was in the child’s best interests).

As set forth below, the best interests of children with two parents in a relationship are served by allowing those parents to marry. Credible research, furthermore, has shown that the gender composition of the relationship between the parents is irrelevant to the welfare of their children. In other words, children of same-sex couples benefit just as much from the love and support of their parents as do children of opposite-sex couples. Amici submit that it is in the best interests of children of same-sex couples for the State to confer on them the same array of legal and social protections that children of opposite-sex couples automatically receive when their parents are married.

**I. The Institution of Marriage Provides Tangible and Material Benefits and Protections to Children Who Are Part of a Married Family.**

**a. A Child’s Well-Being Is Protected When His or Her Parents Are Married.**

Marriage confers significant legal and economic protections on families deciding to conceive or adopt a child.<sup>3</sup> Whether or not both parents are biologically related to the child, marriage provides a vehicle for the child’s securing such benefits from both parents. As this Court has previously observed

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<sup>3</sup> In addition to raising children that entered the family through adoption or donor insemination, same-sex couples may be raising children born to or adopted by one of the partners prior to the union. Although marriage for same-sex couples may not create a legally recognized relationship between these children and their step-parents,



in the context of second parent adoptions, such benefits include: “Social Security and life insurance benefits in the event of a parent’s death or disability, the right to sue for the wrongful death of a parent, the right to inherit under the rules of intestacy ... and the eligibility for coverage under both parents’ health insurance policies.” *In re Jacob*, 86 N.Y.2d at 658.

Children of same-sex parents, however, are prevented by current law from receiving some of these benefits and protections, and can secure others only if their parents have the time and the resources to procure them. Yet these same benefits and protections automatically accrue to children of opposite-sex married couples. Thus, extending the benefits and protections of marriage to same-sex couples would put their children on an equal footing with their peers raised by opposite-sex parents.

**i. Children of Married Parents Benefit From Their Ability Automatically to Secure Disability Benefits and Health Care Coverage from Either Parent.**

Marriage inequality disadvantages same-sex couples and their children under New York law when it comes to obtaining disability benefits. Under New York law, if a worker dies from a compensable injury under worker’s compensation law, the surviving spouse and/or minor children are entitled to weekly cash benefits. *See, e.g.*, N.Y. Workers’ Comp. Law § 236, 2(11) (defining “child” for purposes of dispensing benefits to include “a posthumous child, a child legally adopted prior to the injury of the employee; and a step-

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the children will benefit from living in a household that enjoys the intangible benefits

child or child born out of wedlock dependent upon the deceased”); *Landon v. Motorola, Inc.*, 38 A.D.2d 18 (3d Dep’t 1971) (rejecting claim of adopted child because court had not signed order finalizing the adoption until after employee’s death).<sup>4</sup> Thus, only spouses and legally recognized children are eligible for these benefits under this State’s law. The insurance also covers funeral expenses.<sup>5</sup> As such, the resources of a family headed by a same-sex couple are less secure than those of one headed by a married couple in the event of a parent’s unexpected death.

In addition, spouses – but not unmarried couples – are permitted to take out life insurance policies on each other.<sup>6</sup> Thus, married persons can protect their families in the event of a spouse’s unexpected death in ways that a same-sex couple in New York cannot.

Marriage inequality also disadvantages the children of same-sex couples in terms of access to health care. A child of a married couple can automatically be covered by either married parent’s health insurance, enabling his or her

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of marriage. *See infra* Part II.a.i-ii.

<sup>4</sup> The Defense of Marriage Act may bar certain benefits to the child survivor of a decedent married to someone of the same sex where eligibility for the benefit depends on a federal definition of marriage. 1 U.S.C. § 7 (limiting the definition of marriage in federal law and regulations to the union of one man and one woman). However, in some instances, benefits to a child will only require a determination of parentage as established under state law. *See, e.g.,* Michele Granda & Jennifer L. Levi, *Will Marriage Be an Option?*, in *Representing Nontraditional Families* § 8.2.3(a) (describing Christina M. Walsh on Behalf of Trevor J. Kay-Walsh, Reference 011-56-5573 (Sept. 24, 2004), which recognized claimant as the child of deceased worker by nature of her Vermont civil union for the purposes of determining claimant’s eligibility for nonbiological parent’s survivor benefits).

<sup>5</sup> N.Y. Workers’ Comp. Law § 16(1).

<sup>6</sup> N.Y. Dom. Rel. Law § 52; N.Y. Ins. Law § 3205.

parents to choose from the time the child is born whose coverage would better suit his or her needs.<sup>7</sup>

Same-sex parents and their children do not have this right. Without marriage (and excepting the lengthy, difficult, and expensive process of second parent adoption, discussed below), only one parent – the biological parent – can automatically secure health coverage for the child. A same-sex parent who has yet to establish a legal relationship with the child will likely be unable to add the child to his or her coverage, thus potentially leaving the child at risk should the child have a medical emergency.<sup>8</sup> If the biological parent does not have access to insurance, or only has access to inferior insurance, the child will remain uninsured or underinsured unless and until his or her second parent receives legal status as a parent. As might be expected, uninsured children often do not receive the medical care they need and as a result suffer from poorer health and development.<sup>9</sup> Marriage reduces the risk of this eventuality by affording the child the right to insurance protection from the non-biological parent and by giving same-sex parents the opportunity to choose the better and more comprehensive of their health care plans with which to cover their children.

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<sup>7</sup> Lisa Bennett & Gary J. Gates, *The Cost of Marriage Inequality To Children and Their Same-Sex Parents*, A Human Rights Campaign Foundation Report (Apr. 13, 2004).

<sup>8</sup> New York is one of seven states that permits same-sex parents to adopt a child they are raising together. But the adoption process is costly and time-consuming, as discussed below. During the adoption process, furthermore, none of these parents-to-be will be recognized as parents. Therefore, not all same-sex couples in New York raising children will necessarily be the legal parents of their children.

<sup>9</sup> *Insuring America's Health*, The Institute of Medicine of National Academies (2004).

**ii. Marriage Increases Resource Pooling and Economic Specialization.**

It is generally accepted that marriage fortifies a commitment between two adults, lending added stability and legal certainty to a relationship.<sup>10</sup> As a result, married couples are more likely to pool their resources.<sup>11</sup> Furthermore, a number of social, recreational and cultural organizations, in addition to most employers, offer benefits specifically and exclusively to married couples.<sup>12</sup> Thus, married couples are more likely to have access to additional resources, and because of the protections of marriage, are more likely to pool these resources to benefit their families.

The stability of marriage also encourages couples with children to engage in economic specialization, enabling one partner to focus primarily on work outside of the home and the other to concentrate on child-rearing and domestic concerns.<sup>13</sup> Because of the legal and economic protections and emotional stability marriage affords, married parents can feel secure in choosing to specialize in work inside or outside the home in ways that a same-sex couple cannot. Children of same-sex parents would benefit if their parents felt equally

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<sup>10</sup> William Meezan & Jonathan Rauch, *Gay Marriage, Same-Sex Parenting, and America's Children*, Vol. 15, No. 2 (Fall 2005).

<sup>11</sup> *Id.*

<sup>12</sup> Partners Task Force for Gay & Lesbian Couples, *Marriage: What's it to ya? Here's what money you lose when you can't be legally married!* (Apr. 7, 2005) (noting that married couples are also able to pool their resources more efficiently as a result of the structuring of private benefits, such as savings on gym memberships and auto clubs).

<sup>13</sup> *Id.*

comfortable in making decisions related to economic specialization, as parents make these choices with the best interests of their children in mind.

**b. Children in a Marriage Benefit from Having Two Adults Legally Responsible for Making Important Decisions in the Child's Best Interest.**

**i. Medical Decisions.**

Children of same-sex couples may be unable to rely on both their parents' ability to authorize care, with the result that the child may not get appropriate medical care simply because an unmarried parent is unable to provide for such care. New York law permits only "a person who has been married or who has borne a child" automatically to give effective consent for medical, dental, health and hospital services for his or her child.<sup>14</sup> If a same-sex parent has no established legal relationship with the child, he or she may be prevented from authorizing the child's medical treatment, even in an emergency. That parent may also be unable to access the child's medical file or discuss the child's medical condition with medical professionals.<sup>15</sup>

Gay and lesbian parents also report difficult experiences in clinics, emergency rooms and hospitals related to their family constellation, with the non-biological parent often being excluded from the process of evaluation and

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<sup>14</sup> N.Y. Pub. Health Law § 2504(2).

<sup>15</sup> N.Y. Pub. Health Law § 17 (providing that an infant's medical records can only be released upon the written request of the parent or guardian of the infant).

treatment if and when the biological parent is unavailable.<sup>16</sup> These inequities may prevent a child from getting the care he or she needs and deserves.

**ii. Educational Decisions.**

By the same token, children benefit from having two parents participate in their educational care and development. Parents can play a part in the educational development of their children in many ways, including by attending school functions, participating in parent-teacher conferences and making decisions that affect their child's development.<sup>17</sup> Research has convincingly shown that children benefit from parent involvement in their education.<sup>18</sup>

If a same-sex parent has been unable to establish a legal relationship with a child, however, he or she may be prevented from actively participating in the child's education.<sup>19</sup> For example, in the context of special education, New York law gives parents the opportunity to attend meetings with teachers and to have an active role in the development of their child's education plan, along with the right to appeal any decisions made by the school district regarding their child's education.<sup>20</sup> A parent with no legal relationship to the child may not be able to

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<sup>16</sup> Ellen Perrin & H. Kulkin, *Pediatric Care for Children whose Parents are Gay or Lesbian*, Pediatrics (1996).

<sup>17</sup> Kathleen Cotton & Karen Reed Wikelund, *Parent Involvement in Education*, NW Regional Educational Library (May 1989).

<sup>18</sup> *Id.*

<sup>19</sup> Cohen Kaufman, *Who is a Legal Parent: Understanding your rights as a lesbian or gay parent*, available at <http://print.family.findlaw.com/marriage/same-sex-parent-rights2.html> (explaining that a legal parent has the right to be with the child and make decisions affecting the child's health, education and well-being.)

<sup>20</sup> N.Y. Educ. Law § 1402-1404 (giving people with parental relations to children these rights). A person in parental relation includes "the parents, guardians or other

participate directly in these very important decisions that affect the child's development.

**c. A Child's Well-Being Is Protected in the Aftermath of a Marriage.**

Marriage also provides a variety of prospective protections for children if and when a marriage ends. Divorce or death of a spouse brings a redistribution of marital assets in which the needs of the children are legally recognized and provided for.

**i. Inheritance Rights.**

Marriage eliminates the danger of disinheritance under the laws of intestate succession for children born while their parents are married. *See Matter of Jacob*, 86 N.Y.2d at 658 (recognizing that without an adoption a child is unable inherit from the unmarried partner of a biological parent even though the partner functions as a parent). When a couple is able to pay for sound estate planning or when the elements of equitable adoption are present (*In re Estate of Mazzeo*, 95 A.D.2d 91, 761-62 (3d Dep't 1983)), a surviving child may succeed in claiming support. However, marriage enables the laws of intestate succession to serve as the ultimate safeguard should either of these measures fail.

**ii. Child Support.**

Marriage secures a child's right to support from both parents. *See* N.Y. Fam. Ct. Act. § 413(1)(a) (charging parents with a duty to support children

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persons, whether one or more, lawfully having the care, custody or control of such child." N.Y. Educ. Law § 1404(2)(10).

under 21). Although courts in New York have required nonparents to support a child in extraordinary circumstances, the duty is generally limited to biological or adoptive parents. *See Karin T. v. Michael T.*, 127 Misc. 2d 14 (N.Y. Fam. Ct. 1985) (recognizing a claim to support based on contract and equitable estoppel). Extending marriage to same-sex couples would enable their children to claim support without having to demonstrate extraordinary circumstances or meet the elements of contract or equitable estoppel. *See id.* at 19.

### **iii. Custody.**

Marriage ensures that no matter the state of affairs between his or her parents, the law recognizes what a child knows from the time the child enters a family: there are two people who have dedicated themselves to providing him or her love, support and protection. *See, e.g.*, N.Y. Dom. Rel. Law § 73(1) (allowing husband to establish legal relationship with children born to his wife through insemination by a donor other than the husband); *id.* § 110 (“an adult husband and his adult wife together may adopt another person”).

Restricting marriage rights can imperil the ability of a parent in a same-sex relationship to gain custody of his or her child in the event that the biological parent dies or that the partners separate before a second adoption is complete. Faced with the second situation, the court in *C.M. v. C.H.*, 6 Misc. 3d 361 (N.Y. Sup. Ct. 2004) held that petitioner, a non-biological parent, had no standing to seek custody of the daughter conceived and raised in a same-sex relationship because the biological parent halted the adoption. *Id.* at 370. By



contrast, however, the court recognized petitioner's right to visit the couple's first child (the daughter's brother) because petitioner had successfully completed the adoption of that child. *Id.* at 362-63.<sup>21</sup> Had the couple been married, both siblings would have had the same legal relationship with each parent.

By allowing second-parent adoption, this Court in *In re Jacob*, 86 N.Y.2d 651, acknowledged a child's interest in having a legal relationship with both functional parents, especially given the possibility that a parent could die or the relationship could end. *Id.* at 658-59 (recognizing the "emotional security" derived from the knowledge that surviving parent will have presumptive custody and that relationships with both parents and siblings will continue if coparents separate). Granting same-sex couples equal access to marriage serves the same concern for the well-being of their children in the event that their relationships end.

**d. The Material Benefits of Marriage to Children of Same-Sex Parents Would Reduce the Burden upon the State of Caring for Such Children.**

Marriage readily allows both parents to establish a legal relationship to any child of the marriage. *See* N.Y. Dom. Rel. Law § 73; *id.* § 110. This relationship carries a legal commitment to provide the child with economic

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<sup>21</sup> The court reached its decision despite the child's Law Guardian's appeal for a "more child centered approach" recognizing the older child's "right and need to have his sister's custody determined on the same basis of his own." *Id.* at 370. In fact, the court reached its decision despite its own acknowledgement that "a recurring theme through all of these standing cases [where a non-biological parent sought shared custody over a child he or she had helped raise] is the injustice they work upon

support (*see* N.Y. Fam. Ct. Act § 413 (recognizing parent’s responsibility to support child under 21))—a commitment that survives the dissolution of the relationship (*id.* (Practice Commentaries) (“neither divorce, separation, nor annulment of a marriage has any effect on the parental duty to support children”). Consequently, a child of a married couple is less likely to become a burden on the state, because he or she will have two parents, rather than one, with a legal commitment to provide support. *See id.* § 415 (recognizing parent’s responsibility to support child receiving public assistance); N.Y. Soc. Serv. Law § 101(1) (same).<sup>22</sup> Furthermore, public costs will be reduced to the extent that income from both parents – as opposed to only the biological parent – renders the child ineligible for public support.

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children. In almost all these cases it is claimed that the children have established family-like relationships and emotional ties to the non-parent.” *Id.*

<sup>22</sup> The New York State Comptroller supports this contention. He has stated that:

[p]roviding financial security for the children of same-sex couples would further reduce the potential burden on the State and City of New York. Children of married parents have access to child support and alimony, and are eligible for health insurance coverage and survivor’s benefits from a non-biological parent. All of these benefits reduce the number of children reliant on various forms of public assistance.

Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State (Mar. 3, 2004), at <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>. *See also* M.V. Lee Badgett et al., Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey’s Domestic Partnership Act, at 10 (Dec. 2003), at [http://www.iglss.org/media/files/DPA\\_final.pdf](http://www.iglss.org/media/files/DPA_final.pdf) (estimating a possible savings of \$45.8 to \$99.9 million to the State as a result of domestic partnership registration).

## **II. Marriage for Same-Sex Couples May Benefit Children By Increasing the Durability and Stability of Their Parents' Relationship.**

### **a. The Stability of Parental Relationships Is Vital to a Child's Well-Being.**

#### **i. Marriage Is More Durable and Stable Than Cohabitation.**

Research has shown that all else being equal, marriage provides a more secure environment for children than cohabitation.<sup>23</sup> This conclusion should hold regardless of the gender of a child's parents.

Marriage affords a host of intangible and psychological protections to parents and to children in addition to the tangible protections discussed above. Unmarried couples are in the aggregate less physically and mentally healthy than married couples.<sup>24</sup> Married couples on average demonstrate superior labor force productivity, longevity, increased sexual fulfillment and exclusivity, better relationships with their parents, and more feelings of self-worth, purpose, and happiness than unmarried couples who live together.<sup>25</sup> None of these findings should be read to slight unmarried couples or single parents; rather, they illustrate that marriage is a beneficent social force, the benefits and protections of which should be available to those who desire to enter into it.

Marriage also strengthens committed relationships for parents raising children. The strong ethic of commitment that comes from marriage leads to

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<sup>23</sup> Meezan & Rauch, *supra* note 10, at 108.

<sup>24</sup> David Popenoe & Barbara Dafoe Whitehead, *Should We Live Together? What Young Adults Need to Know About Cohabitation Before Marriage*, The National Marriage Project (Rutgers University, 2d ed. 2002).

more stable child rearing, permanency, and the security that comes from having two married parents. Researchers have noted that the long-term time frame implicit in marriage encourages the couple to work on their relationship and to assist one another in developing their individual skills with respect to parenting.<sup>26</sup>

Scholars also point out that the act of marriage itself, and the social implications conveyed by the act of marriage, encourage couples to stay together because they have made a public commitment. The powerful social implications of marriage not only serve as a strong incentive for the couple to stay together, but also for family and friends of the couple to assist and encourage them to work out problems and remain together despite obstacles.<sup>27</sup>

Married couples also report an enhanced connection and support received from the larger community, which includes extended families, religious institutions, and other community-based institutions.<sup>28</sup> These benefits flow to married couples regardless of their gender make-up. For example, same-sex couples who have married in California and Massachusetts have reported that there are many ways in which the act of marriage has intensified and strengthened their emotional connections and their relationships.<sup>29</sup>

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<sup>25</sup>

*Id.*

<sup>26</sup>

*Id.*

<sup>27</sup>

Meezan & Rauch, *supra* note 10, at 109.

<sup>28</sup>

Popenoe & Whitehead, *supra* note 24, at 8.

<sup>29</sup>

Meezan & Rauch, *supra* note 10, at 109 (some couples have reported that the act of marriage has connected them in ways they had not previously experienced, others

**ii. Permitting Same-Sex Couples To Marry Will Significantly Reduce Social Stigmas.**

One prominent commentator has argued that marriage for same-sex couples is important on a community-wide level because it demonstrates to children that marriage is the normative model for adult relationships. “By signaling the cultural primacy of matrimony, same-sex marriage adds to the social capital available to children of gay and straight couples alike. It’s the ban on gay marriage that’s more likely to harm kids and weaken society’s core institution.”<sup>30</sup>

Although social conventions have changed over time, certainly there is some stigmatization associated with mere cohabitation.<sup>31</sup> But for children of same-sex parents, the stigma may be compounded by homophobia.

Unfortunately, [same-sex] families are up against a serious adversary: invisibility. . . . [G]ay and lesbian parents are still the least visible segment of the gay community. . . . And in the heterosexually-dominated parenting world, gay and lesbian parents are barely detectable. Homophobia is still an acceptable hatred in the school systems. . . . Legal marriage would not solve all the problems of homophobia for these families, but it would grant them sufficient safety to risk visibility.

Dr. April Martin, *Same-Sex Marriage and Parenting* (1996).

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report that validation of the marriage by the city of San Francisco has made them feel truly accepted).

<sup>30</sup> Jonathan Rauch, *Family’s Value: Why Gay Marriage Benefits Straight Kids*, The New Republic (May 30, 2005).

<sup>31</sup> “Though less stigma attaches to cohabitation today than in the past, married families still benefit from stronger community support and kinship networks, easing the burden on parents and children alike.” Meezan & Rauch, *supra* note 10, at 109.

While not a cure-all, allowing their parents to marry will benefit children of same-sex parents by letting those children know that the State does not consider their families and/or parents' relationship to be second-class, or inferior to heterosexual relationships. "Indeed, the very existence of same-sex marriage may reduce the stigmatization or perceived peculiarity of same-sex families, which would presumably reduce the social pressure on the children."<sup>32</sup>

According to Dr. Ellen Perrin, a leading expert in the field of child development who specializes in the development and well-being of children with gay or lesbian parents:

If there is a problem with being a child in a family made up of same-sex parents, it doesn't come from the child or the family but from the society around them . . . The stigma that still surrounds homosexuality, even now, makes life more difficult for these families which are otherwise quite able to nurture and care for their children.

Tufts E-News, *Same-Sex Parenting OK, Says Professor* (Apr. 23, 2004).

Children of same-sex parents deserve the opportunity to be treated like their peers. They are entitled to have and receive the same legal protections afforded to children of opposite-sex married couples. And they are entitled to have the State recognize and not ignore the family structure in which they live. The State's recognition of these children's parents' union will not eradicate all homophobia or result in immediate social acceptance; but permitting their same-

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<sup>32</sup>

*Id.*

sex parents to marry will go a long way toward removing the social stigma still attached to them and toward fulfilling the best interests of these children.

**iii. All Children, Not Just Unplanned Children, Are Entitled to the Protections That Come with Their Parents' Ability to Marry.**

In its main brief to this Court, the City of New York contends that the need to protect children of unplanned pregnancies provides a rational basis for restricting marriage to opposite-sex couples. Unplanned pregnancies, after all, can occur only in relationships between a man and a woman. Hence, the City argues that “the State could reasonably decide that by encouraging opposite-sex couples to marry, thereby assuming legal and financial obligations, the children born from such relationships will have better opportunities to be nurtured and raised by two parents within long-term, committed relationships, which society has traditionally viewed as advantageous for children.” Brief of the City of New York at 59-60.

The City ignores the fact, however, that research has found little or no correlation between unintended pregnancy and marriage. Rather, the prevailing research shows a causal link between unintended pregnancies and social and cultural factors such as poverty.<sup>33</sup> Indeed, the City does not point to any research that unintended pregnancy leads to marriage. In fact, research has found “government policies that promote marriage for unwed mothers as a way

to boost disadvantaged women out of poverty and off welfare are likely to have mixed results at best.”<sup>34</sup> The same research has shown that hasty marriages motivated by an unplanned pregnancy are highly unstable and have divorce rates well above the national average.<sup>35</sup>

Furthermore, the City’s argument, in the guise of supplying a supposedly rational basis for the current regulation of marriage, irrationally privileges the needs of unplanned children over all others. All children – planned or unplanned – deserve a loving family in which to grow. The State’s concern for the stability and welfare of children should not depend on the manner of conception or on the intent of a conceiving couple. Whether a child is planned or unplanned, conceived through sexual intercourse or with the help of reproductive technology, biological or adopted, that child deserves to benefit from the protections and stability available to him or her if his parents are given the option of marrying.

The City cites *Mirizio v. Mirizio*, 242 N.Y. 74 (1926), for the proposition that “marriage is recognized to ‘exist with the result and for the purpose of begetting offspring’” Brief of the City of New York at 58. The City mis-reads *Mirizio*, which concerned a wife's refusal to have any sexual relations with her

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<sup>33</sup> See Department of Health and Human Services, Center for Disease Control and Prevention, *Pregnancy Risk Assessment Monitoring System (PRAMS): PRAMS and Unintended Pregnancy*, at <http://www.cdc.gov/PRAMS/UP.htm>.

<sup>34</sup> See Ohio State Research Communications, *Government’s Marriage Promotion Policies Likely to Fall Short Without Emphasis on Reducing Unwed Child Bearing, Study Suggests*, <http://researchnews.osu.edu/archive/promarry.htm>.

<sup>35</sup> *Id.*



husband, rather than any refusal or inability to have children. *See Mirizio*, 242 N.Y. at 77; *Diemer v. Diemer*, 8 N.Y.2d 206 (1960) (reaffirming that sexual intimacy between spouses is essential to marriage).

Moreover, the City's reliance on a case written in 1926, at a time during which the Court could not possibly have anticipated the changes in cultural mores and laws about sexual relations, the medical advances in assisted reproduction, or marriage for same-sex couples, is not particularly instructive. *Mirizio* does not stand for the proposition that it is rational to reserve marriage only to couples who may conceive children unintentionally. Indeed, the City's argument rests on the premise that children conceived out of wedlock should be given the advantage of having two parents in a committed relationship be married. The very same is true, however, of children born to or adopted by same-sex parents.

By the same token, the City's argument, grounded in *Mirizio*, that the purpose of marriage is to accommodate child-bearing, is subject to an obvious but powerful critique: opposite-sex couples get to marry regardless of their age, fertility, or intent to conceive. If the purpose of marriage regulation is indeed to encourage procreation, then its current contours bear little or no relation to its desired function.

The City cites *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. Ct. App. 2005) for the reality that "it may well be . . . that for many people 'it is the exclusive and permanent commitment of the marriage partners to one another, not the

begetting of children, that is the sine qua non of civil marriage.” (quoting *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941, 961 (Mass. 2003)). Brief of the City of New York at 60 n.42. Amici agree that marriage is about protecting the relationship between the marriage partners. But when those partners have children, the parents' marriage offers the children the stability of having two parents who receive all the benefits and protections associated with marriage. Fundamentally, children care that they are protected; marriage provides them with some of that protection. Whether the children receive that protection should not depend on the gender of their parents.

**iv. Marriage, In Contrast to Adoption, Confers a Series of Protections Which Otherwise Take Significant Amounts of Time and Money to Secure.**

Same-sex couples who elect to become parents do not benefit from the presumption of parenthood that opposite-sex married couples receive. Under New York law, a child born to a married couple is presumed to be the legitimate child of both parents, regardless of whether the child was conceived through intercourse or through assisted reproduction. N.Y. Dom. Rel. Law § 24. Thus, if a heterosexual married couple chooses donor insemination as a means to become pregnant, the husband (who is not the biological father) does not have to file a petition for adoption in the State of New York.<sup>36</sup> This presumption does not apply to children born to same-sex couples.

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<sup>36</sup> In New York, a child born to a married couple through donor insemination by a licensed physician “and with the consent in writing of the woman and her husband,

There are only two ways in which same-sex couples in New York can jointly become legal parents of children – through successive or joint adoption of a non-biological child or through adoption of one partner’s child by the non-biological parent. *See In re Jacob*, 86 N.Y.2d at 651 (holding that “the unmarried partner of a child’s biological mother, whether heterosexual or homosexual, who is raising the child together with the biological parent, can become the child’s second parent by means of adoption”); *see also In re Carolyn B.*, 6 A.D.3d 67 (4th Dep’t 2004) (holding that two unmarried adults may jointly adopt a child who is the biological child of neither of them). Both methods are costly and take a significant amount of time to complete.

Thus, a lengthy and costly adoption process is required for at least one partner in a same-sex relationship before he or she can be granted parental rights and before the child can receive the benefits of such rights. The adoption process usually takes six to eighteen months and costs can vary from \$5,000 to \$40,000.<sup>37</sup> The steps in the adoption process in New York include: choosing an adoption agency; submitting an application; completing a home study process; attending agency-sponsored training; working with a caseworker; possibly completing at least three months of supervision; and ratifying the adoption in

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shall be deemed the legitimate, natural child of the husband and his wife for all purposes. The aforesaid written consent shall be executed and acknowledged by both the husband and wife and the physician who performs the technique shall certify that he had rendered the service.” N.Y. Dom. Rel. Law § 73.

<sup>37</sup> *See* U.S. Department of Health and Human Services, Administration for Children and Families, National Adoption Clearinghouse, Costs of Adoption: A Factsheet for Families, at [http://naic.acf.hhs.gov/pubs/s\\_cost/index.cfm](http://naic.acf.hhs.gov/pubs/s_cost/index.cfm)

court.<sup>38</sup> It may take at least three to twelve months before the adoption may be finalized in court.<sup>39</sup> Of course, completing the adoption in court requires an attorney and payment of legal fees, including court costs.

If the adoption process is not completed, a non-biological parent in a same-sex relationship will continue to be a legal stranger to the child. The child has no right to receive child support from that parent, no right to inherit money through intestacy if that parent dies or becomes incapacitated, no right to visit that parent in the event of a dissolution of the relationship with the biological parent, and no right to a relationship with that parent or that parent's extended family in the event that the biological parent dies or becomes incapacitated. The absence of a legal framework with respect to a child's second parent clearly is detrimental to the child's interests.

Marriage, by contrast, provides an automatic, quick, and inexpensive mechanism readily available to opposite-sex couples to preserve rights and assets for the protection of their children. Thus, although same-sex couples can make arrangements to mimic *some* of the protections of marriage (most notably, adoption, but also wills and trusts), such arrangements fall short of the standard achieved by marriage, and are only available to couples who have the resources

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<sup>38</sup> See New York State Adoption Services, Frequently Asked Questions, [http://www.ocfs.state.ny.us/adopt/adopt\\_faq.asp](http://www.ocfs.state.ny.us/adopt/adopt_faq.asp).

<sup>39</sup> *Id.*

to obtain them. This leaves all but the wealthiest same-sex couples and their children at a disadvantage.<sup>40</sup>

**b. Domestic Partnerships, Available in Some Parts of the State, Do Not Provide the Panoply of Protections That Come with Marriage.**

Domestic partnerships are not the equivalent of marriage.<sup>41</sup> Domestic partnerships provide only a limited number of the protections that flow from marriage and only indirectly benefit the children of registered domestic partners. They have virtually no state-wide recognition and are provided by only a handful of cities, towns and counties. Indeed, domestic partnerships provide only those protections that are within a locality's authority.<sup>42</sup> They provide very limited state law protections<sup>43</sup> and no protections under federal law. In fact, the

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<sup>40</sup> And notwithstanding that wealthy same-sex couples can secure certain protections, they and their children are denied benefits afforded only to married couples.

<sup>41</sup> In fact, New York City domestic partnerships were upheld in a First Department decision precisely because they do not amount to marriage. *Slattery v. City of New York*, 179 Misc. 2d 740 (N.Y. Sup. Ct. 1999) (holding that New York City's domestic partnership law was not impermissible legislation in the area of marriage or domestic relations), upheld on appeal in *Slattery v. City of New York*, 266 A.D.2d 24, 25 (1st Dep't 1999) ("As the motion court aptly observed and detailed, there are enormous differences between marriage and domestic partnership, and, in light of those very substantial differences, the [Domestic Partnership Law] cannot reasonably be construed as impugning upon the State's exclusive right to regulate the institution of marriage.").

<sup>42</sup> See *Slattery*, 179 Misc. 2d 740, 755-56 (holding that New York City's domestic partnership law was within the city's power under the home rule principles and stating that any extension of the rights granted under the law must remain "consistent with home rule principles"). See also *Council of the City of New York v. Bloomberg*, 2006 N.Y. LEXIS 149 (N.Y. Feb. 14, 2006) (holding that the New York City Equal Benefits Law which limited city agencies' ability to enter into contracts with firms that did not provide domestic partners benefits equal to those provided to married spouses was invalid because it was preempted by N.Y. Gen. Mun. Law § 103 governing bidding for public works contracts and portions of ERISA).

<sup>43</sup> The state-wide protections provided to domestic partners are minimal, and include such protections as the right to hospital visitation (N.Y. Pub. Health Law § 2805-q), the right to control the disposition of a domestic partner's remains (N.Y. Pub. Health

protections denied to domestic partners are among the fundamental rights and protections of marriage.<sup>44</sup>

Similarly, domestic partnerships provide none of the protections to children that they receive as a result of their parents' marriage. Though the protections incident to domestic partnerships, such as eligibility for health insurance to the partner, the right to stay in a rent-controlled or city-owned apartment after the death of a domestic partner, death benefits and hospital visitation, may provide indirect benefits to the children of domestic partners, domestic partnership laws are completely silent with regard to the rights and benefits of children of domestic partners. There is no presumption of legitimacy

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Law § 4201), supplemental burial allowances to surviving domestic partners of members of the armed forces killed in the line of duty (N.Y. Exec. Law § 354-b), and the eligibility of surviving domestic partners of persons killed in the September 11, 2001 terrorist attacks for death benefits and funeral expenses (N.Y. Workers' Comp. Law § 4).

<sup>44</sup> Domestic partners cannot sue for the wrongful death of a spouse. *Langan v. St. Vincent's Hosp. of N.Y.*, 25 A.D.3d 90 (2d Dep't 2005) (holding that a surviving partner in a couple that had entered into a civil union in Vermont did not have standing to sue for the wrongful death of his partner because domestic partners were not included by the New York Legislature in the class of people entitled to assert a wrongful death claim). Domestic partners cannot receive death benefits under workers' compensation laws unless they lost their partner in the tragic and extraordinary events of September 11, 2001. *Valentine v. Workers' Compensation Board*, 17 A.D.3d 38 (3d Dep't 2005) (holding that the surviving registered domestic partner who had lived with his partner for twenty one years, owned an apartment together, jointly held bank account and investments and designated each other as executors and beneficiaries of each other's wills, was not eligible for workers' compensation after the death of his partner who was killed while working as a flight attendant on an American Airlines flight that crashed in Rockaway, Queens in November, 2001). Domestic partners cannot sue for loss of services or loss of consortium. *Lennon v. Charney*, 8 Misc. 2d 846 (S. Ct. Westchester Cty. 2005). Domestic partners cannot claim discrimination on the basis of marital status under state law if they are denied benefits and protections that are granted by their employers to married persons. *Funderburke v. Uniondale Free School Dist. No. 15*, 172 Misc. 2d 963 (S. Ct. Nassau Cty. 1997).

of a child born into a domestic partnership;<sup>45</sup> domestic partners must either jointly adopt a child or arrange for a second-parent adoption of one partner's biological child if both parents are to have a legal relationship to the child. Furthermore, there are no provisions protecting children raised by domestic partners in the event of the dissolution of a domestic partnership.<sup>46</sup> The process does not require any determination of parental support or custody.

Domestic partnerships are easily dissolved, and accordingly, provide few of the benefits or stability of marriage: in New York City, a domestic partner can unilaterally file a termination statement with the city clerk so long as the other domestic partner has been notified "by registered mail return receipt requested." NYC Admin. Code § 3-242. No grounds for dissolution need be asserted. *Slattery*, 179 Misc. 2d at 745. This stands in sharp contrast to the laws regulating divorce, which in New York can be granted only on showing of cause. N.Y. Dom. Rel. Law § 170.<sup>47</sup>

Moreover, only a limited number of local governments in New York State have passed domestic partnership laws.<sup>48</sup> Thus, unlike married spouses,

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<sup>45</sup> *Slattery*, 179 Misc. 2d at 747 ("The children of domestic partners, on the other hand, do not receive the stamp of legitimacy upon the filing of the certificate [of domestic partnership].").

<sup>46</sup> *Slattery*, 179 Misc. 2d at 748 ("Numerous legal protections exist relating to both spouses' rights in the [divorce] proceeding. Child custody and visitation rights are more clearly defined than they would be following the dissolution of a domestic partnership.").

<sup>47</sup> Some theorists have noted that marriage may be more stable than cohabitation or partnerships due to the fact that there are considerable legal barriers to ending a legal marriage. *See, e.g.*, Meezan & Rauch, *supra* note 10, at 108.

<sup>48</sup> These include New York City, Albany, Ithaca, and Rochester, the towns of East Hampton and South Hampton and the County of Westchester.

registered domestic partners and their children stand to lose even those limited protections provided by domestic partnership laws if they move to other localities within the State that do not recognize domestic partnerships.<sup>49</sup> The prospect of losing these protections limits domestic partners' physical and economic mobility, and may cause them to pass up opportunities that would otherwise be beneficial to them and their children. Married couples, by contrast, receive uniform protection throughout the State and do not face these restrictions on their freedom to move or change jobs. Allowing same-sex couples to marry would ensure robust and consistent state-wide protections to them and their children, protections which are not replicated by the patchwork of New York's local domestic partnership laws.

### **III. The Leading Experts — Child Welfare and Mental Health Professionals — Agree That Lesbian and Gay Parents Are As Capable and Successful at Raising Well-Adjusted Children As Are Heterosexual Parents.**

Given the scientific consensus regarding the parenting abilities of lesbians and gay men and the positive outcomes for their children, many major children's welfare organizations and mental health professionals have issued

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<sup>49</sup> See, e.g., NYC Admin. Code §§ 3-240 *et seq.* Cf. *Funderburke*, 172 Misc. 2d 963 (holding that a school district in Nassau County was not bound by New York City Human Rights Law and did not discriminate on the basis of marriage, in violation of New York State law, when it extended health insurance to teachers' spouses but not to domestic partners). Plaintiffs Cynthia Bink and Ann Pachner allege that Ms. Bink left a job that she loved and took one with the City of New York expressly because it was a job that offered domestic partner benefits, specifically health insurance for domestic partners. (Complaint ¶ 56). It is only natural that a person already in a job or locality offering domestic partner benefits would forego other opportunities if those would involve a loss of such benefits.



policies and statements opposing restrictions on parenting by lesbians and gay men as both baseless and contrary to the best interests of children.

For instance, the American Academy of Pediatrics (“AAP”), which represents over 50,000 pediatricians and offers guidance to parents on child-rearing issues, stated “that children with parents who are homosexual can have the same advantages for health, adjustment and development as can children whose parents are heterosexual.”<sup>50</sup> After reviewing more than two decades of studies, the AAP “found that children of gay or lesbian parents were as well adjusted socially and psychologically as the children of heterosexual parents.”<sup>51</sup> The AAP has adopted a formal policy declaring that “children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as 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.*”<sup>52</sup>

According to the AAP, the keys to positive outcomes for the child are the quality of the parent-child relationship and the quality of the parents’ own

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<sup>50</sup> See Erica Goode, *Group Backs Gays Who Seek To Adopt a Partner’s Child*, N.Y. TIMES, Feb. 4, 2002, at A17.

<sup>51</sup> See *id.*

<sup>52</sup> Ellen C. Perrin & the Committee on Psychosocial 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://aappolicy.aappublications.org> (emphasis added) [hereinafter Perrin, *Technical Report*]; see also Ellen C. Perrin & 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 (2002), available at <http://aappolicy.aappublications.org> (policy statement

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.<sup>53</sup>

Numerous other organizations, after considering these same issues, have also concluded that lesbian and gay parents are as capable and successful at raising well-adjusted children as heterosexual children. Thus, for example, the Child Welfare League of America (“CWLA”), which sets national child-welfare standards, has issued a Standards of Excellence for Adoption Services that states that “[a]pplicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and *not on their . . . sexual orientation*.”<sup>54</sup>

Similarly, the NASW concludes that “same-gender sexual orientation should be afforded the same respect and rights as other-gender orientation.”<sup>55</sup>

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accompanying Technical Report). Through its policies and educational materials, the AAP offers guidance to parents and others on child-rearing issues.

<sup>53</sup> Perrin, *Technical Report*, *supra* note 52, at 343 (emphasis added).

<sup>54</sup> Child Welfare League Of America, *CWLA Standards Of Excellence For Adoption Services* (2000) (emphasis added).

<sup>55</sup> National Association of Social Workers, *Lesbian, Gay, and Bisexual Issues*, SOCIAL WORK SPEAKS 224, 228 (2003).

Accordingly, the NASW encourages “adoption of laws that recognize . . . child custody . . . and other rights in lesbian, gay and bisexual relationships.”<sup>56</sup> The NASW has determined that:

The most striking feature of the research on lesbian mothers, gay fathers, and their children is the 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.<sup>57</sup>

The North American Council on Adoptable Children states that “[e]veryone with the potential to successfully parent a child in foster care and adoption is entitled to fair and equal consideration regardless of sexual orientation or differing life style or physical appearance.”<sup>58</sup>

As early as 1976, the American Psychological Association (“APA”) affirmed that “[t]he sex, gender identity, or sexual orientation of natural or prospective adoptive or foster parents should not be the sole or primary variable considered in custody or placement cases.”<sup>59</sup> In 1995, the APA, which represents more than 155,000 psychologists, reached the same conclusions in a thorough research review:

Not a single study has found children of gay parents to be disadvantaged in any significant report relating to children of heterosexual parents. Indeed, the evidence

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<sup>56</sup> *Id.* at 230.

<sup>57</sup> *Id.* at 225.

<sup>58</sup> North American Council on Adoptable Children, *Policy Statements: Gay and Lesbian Foster and Adoptive Parenting* (Mar. 14, 1998), available at [http://www.nacac.org/about\\_policystatements.html](http://www.nacac.org/about_policystatements.html).

<sup>59</sup> John J. Conger, *Proceedings of the American Psychological Association, Incorporated, for the Year 1976*, 32 AM. PSYCHOL. 408, 432 (1977).

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 psychological growth.<sup>60</sup>

The American Psychoanalytic Association also has been unequivocal in support of gay and lesbian parenting:

Gay and lesbian individuals and couples are capable of meeting the best interest of the child and *should be afforded* the same rights and *should accept the same responsibilities* as heterosexual parents.<sup>61</sup>

The American Academy of Child & Adolescent Psychiatry, which represents over 6,500 psychiatrists, concurs.<sup>62</sup>

All of the previously cited organizations have recognized that lesbians and gay men can provide healthy child-rearing environments, and that their children adjust just as well as other children. For these reasons, there is no basis to disfavor parenting by lesbians and gay men.

#### **IV. Recognizing Marriage for Same-Sex Couples Would Be a Logical Extension of this Court's Decision in *In re Jacob*.**

This Court's decision in *In re Jacob* allowing second-parent adoptions for same-sex couples rests on the premise that it is in the best interests of a child

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<sup>60</sup> American Psychological Association, *Lesbians and Gay Parenting: A Resource for Psychologists* 8 (1995), available at <http://www.apa.org/pi/parent.html>.

<sup>61</sup> American Psychoanalytic Association, *Position Statement on Gay and Lesbian Parenting* (May 16, 2002), available at <http://www.apsa.org/ctf/cgli/parenting.htm> (emphasis added).

<sup>62</sup> See American Academy of Child & Adolescent Psychiatry, *Policy Statement on Gay, Lesbian and Bisexual Parents* (June 1999), available at <http://www.aacap.org/publications/policy/ps46.htm> ("Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to

when “two adults who actually function as a child’s parent [are allowed] to become the child’s legal parents.” *In re Jacob*, 86 N.Y.2d at 658. *In re Jacob* recognizes that children of same-sex parents gain important protections within an effectively established family structure regardless of the gender composition of the parents.

*In re Jacob* embraces the reality that many children across the State of New York are being raised by same-sex parents. By permitting second-parent adoptions for same-sex couples, New York has already adopted a legal framework that allows for strengthening certain ties between one partner and the biological or adopted child of another partner. Recognizing the right of same-sex couples to marry is a logical extension of *In re Jacob*, as it would imbue children of same-sex couples with *all* of the protections that their counterparts have who are raised by opposite-sex married parents. In other words, marriage is in the best interests of children of same-sex parents because it provides those children with stability and a wide variety of protections that are now only available to other children, for the sole reason that those children's parents are allowed to marry.

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heterosexual parents, show no greater degree of instability in parental relationship or developmental dysfunction in children”).

## CONCLUSION

For the foregoing reasons, Amici respectfully submit that the best interests of children of gay and lesbian parents compel the recognition of those parents' right to marry in New York State.

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Respectfully Submitted,

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