No. S102671

IN THE

SUPREME COURT OF CALIFORNIA

SHARON S.,	)	Court of Appeal
	)	Case No. D03871
Petitioner,	)	
	)	Superior Court
v.	)	Case No. A46053
	)	
SUPERIOR COURT OF SAN DIEGO COUNTY,	)	
	)	
Respondent.	)	
	)	
ANNETTE F.,	)	
	)	
Real Party in Interest.	)	

After a Decision of the Court of Appeal, Fourth Appellate District, Division One,
Granting a Peremptory Writ Directed to the
Superior Court of California, County of San Diego
The Honorable Susan D. Huguenor, Judge.

BRIEF OF *AMICI CURIAE* CHILDREN OF LESBIANS AND GAYS EVERYWHERE, et al., IN SUPPORT OF NEITHER PARTY

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I. INTERESTS OF *AMICI CURIAE*

Amici are organizations that provide social, legal and other services to lesbian and gay couples who are raising children and wish to provide the greatest possible degree of security to them. *Amici* have extensive knowledge of the legal bases and practical benefits to families of second-parent adoptions.[1] Statements of interest for each *amicus curiae* are attached hereto in Appendix A.

II. INTRODUCTION AND SUMMARY OF THE ARGUMENT

If the majority opinion below becomes the law in California, "[t]he ultimate financial and emotional losers will be children who are the intended beneficiaries of California's adoption laws." (*Sharon S. v. Superior Court* (2001) 93 Cal. App. 4th 218, 234 [113 Cal.Rptr.2d 107, 120] (Kremer, P.J., dissenting).)

For more than fifteen years, second-parent adoptions have given security to children's parental bonds. These adoptions strengthen families in which two adults have loved and cared for a child, usually since birth, and have both functioned in every way as parents. Without second-parent adoption, the child has a protected legal bond with only one parent. The

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[1] *Amici* use the term "second-parent adoption," as it is commonly used in the growing literature and case law on this subject, to mean an adoption that creates a second, legal parent-child relationship for children being raised by an unmarried couple, only one of whom was a legal biological or adoptive parent prior to the proceeding.

children in these families become more secure when their ties with both of the parents they count on are legally recognized through second-parent adoption. Both adults become able to make medical and other important decisions on the children's behalf. Both assume a legal duty to provide financial support. Both can be a source of health insurance, social security, inheritance and other important benefits. And both have presumptive rights of custody and visitation if the parents' relationship dissolves. And, not least, the death of one parent does not leave the child an orphan.

This brief complements Annette's reading of the California adoption statutes and underscores why second-parent adoptions are permissible as a matter of California law. "Second-parent" adoptions are directly analogous to the stepparent adoption practice that has been common in California for more than 75 years, both before and after any express acknowledgment of stepparent adoption in the statute. Because the purpose, language and authoritative interpretations of the state's adoption laws support second-parent adoptions, and because the need for them persists, *amici* urge the Court to affirm that this reasonable, child-protective process is valid and should continue.

Although there now is explicit authority for registered domestic partners to adopt like stepparents, this does nothing to change the flexible, child-centered approach required by the law as a whole. Nor should the

Court alter this approach, which has been working well for many years and is still needed by many families even with the domestic partnership law. Family diversity prompted this approach in 1925 for stepparents and in 1985 for second parents; California's diversity has only increased since then. Children in this state were intended to be the beneficiaries of a flexible statute, not one requiring a legislative endorsement of each particular family form.

This brief also discusses California's law in the national context, comparing the California statutory scheme to those in states in which appellate courts have upheld second-parent adoptions. Although this Court faces a question of interpretation of a California law, proper interpretation requires the question to be considered in light of the law's immense importance to family stability for children in California; children in other states have this need as well, and other courts have addressed it by interpreting their adoption laws liberally and consistently with their own policy goals of securing legal and emotional relationships between children and adults who raise them. Just like in California, there is a great diversity of families across the country, and second-parent adoption is providing enormous practical and emotional stability for countless children in other states, to the benefit of those states as a whole.

Second-parent adoption originated in California, where trial court

judges began construing the adoption statutes to permit them in the mid-1980s. Since then, the soundness of the practice has become recognized in many states. It would be a tragic, ironic error if the Court of Appeal's decision were not reversed, and ***this*** state's children were consigned to being, in Presiding Justice Kremer's words, "financial and emotional losers."

Accordingly, *amici* ask the Court to reverse the decision of the appellate court, to affirm its longstanding approach to statutory interpretation in this area, and to instruct the Court of Appeal either to address the other questions presented by Sharon's writ petition or to return the case to the trial court. Amici take no position on whether ultimately the adoption should be granted, but the trial court should be instructed to proceed in the usual manner to consider the relevant evidence bearing on that issue.

III. STATEMENT OF THE CASE

Sharon S. and Annette F. lived together in a committed domestic relationship for more than a decade. (Petition For Writ Of Mandate And/Or Prohibition ("Petition"), at ¶ 3.) Sharon became pregnant through donor insemination in 1996. (Petition at ¶ 6.) Sharon and Annette's first son, Zachary S., was born in October 1996. (*Id.*) With Sharon's consent, Annette sought a second-parent adoption of Zachary, which was granted in

June 1997. (*Id.*) Zachary is now five and one half years old. His adoption is not directly at issue here.

The child who is the subject of this proceeding, Joshua S., also was conceived by donor insemination and was born to Sharon in June 1999. (*Id.* at ¶ 7.) With Sharon's consent, Annette filed a petition to adopt Joshua in September 1999. (*Id.* at ¶¶ 8-18.) While the petition was pending, however, Sharon and Annette separated and Sharon asked the court to postpone action on Annette's adoption petition. (*Id.* at ¶¶ 22-24.) Annette moved out of the family's residence in August 2000. (*Id.* at ¶ 26.)

The San Diego County Department of Health and Human Services twice recommended that Annette's petition to adopt Joshua be granted. (Petition at ¶¶ 19, 35; Exh. 2, at 14-18; Exh. 14, at 204-07.) In October 2000, Annette moved for an order of adoption with respect to Joshua. (Exh. 7.) Sharon moved to dismiss the adoption petition in December 2000, challenging *inter alia* the authority of California courts to grant second-parent adoptions. (Exh. 25, Exh. 47 at 4-5.) After the superior court denied her motion to dismiss, Sharon sought a writ of mandate or prohibition from the Court of Appeal. (Exh. 60.)

A divided panel of the Court of Appeal, Fourth Appellate District, held that the liberal construction rule is not pertinent in this case, and that courts lack the ability to grant or recognize second-parent adoptions.

(*Sharon S.*, *supra*, 93 Cal.App.4th at 226.) The court then advised families who thought they had a valid second-parent adoption order to "ratify" their adoptions pursuant to AB25. (*Id.* at 228, discussing Stats. 2001, ch. 893, §3.) A month later, the court withdrew its suggestion regarding "ratification," but did not alter its reading of the statute, or remove the cloud of doubt over past and pending adoptions. (___ Cal.App.4th ___ [2001 Cal. App. LEXIS 2199, at *2] (modifying opinion on denial of rehearing).) This Court then granted review. (___ Cal.4th ___ [116 Cal.Rptr.2d 496, 39 P.3d 512].)

IV. ARGUMENT

A. California Law Permits Second-Parent Adoptions.

1. Longstanding precedent supports adoption by a functional parent without termination of the birth parent's rights in order to secure existing family relationships that serve children's interests.

For more than fifteen years, superior courts across the state have read California's adoption laws to permit second-parent adoptions without terminating the rights of the child's existing and continuing legal parent.[2]

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[2] It is difficult to know precisely how many second-parent adoptions have been granted over the years, or to verify all the courts within which they have been granted, because adoption proceedings generally are confidential. Through their work on behalf of communities of persons for whom these adoptions are especially desirable, however, *amici* are aware that tens of thousands of such adoptions have taken place since the early eighties. *See* Eskridge & Hunter (1997) Sexuality, Gender and the Law 866. *See generally* National Center for Lesbian Rights ("NCLR") (July

This practice gives legal security to the child's family in fact. It is consistent with well-settled principles that have long governed California's adoption laws and require that they be construed liberally to protect the welfare of children. (*Dept. of Social Welfare v. Sup. Ct. of Contra Costa Cty.* (1969) 1 Cal.3d 1, 6 [81 Cal.Rptr. 45, 459 P.2d 897]; *Reeves v. Bailey* (1975) 53 Cal.App.3d 1019, 1022 [126 Cal.Rptr. 51].) Indeed, it was more than a century ago that this Court held:

> "In determining what provisions of the [adoption] law are essential, and therefore mandatory, the statute is to receive a sensible construction, and its intention is to be ascertained, not from the literal meaning of any particular word or single section, but from a consideration of the entire statute, its spirit and purpose."

(*In re Johnson's Estate* (1893) 98 Cal. 531, 536 [33 P. 460].)

Accordingly, courts in this context have ***not*** construed strictly the language providing for termination of birth parent(s)' rights (Fam. C. §

2001) *Second Parent Adoptions: An Information Sheet* <http://www.nclrights.org/publications/pubs_2ndparentadoptions.html>; NCLR (Nov. 2002) *Adoption by Lesbian, Gay and Bisexual Parents: An Overview of Current Law* <http://www.nclrights.org/publications/pubs_adoption.html>; Lambda Legal Defense and Education Fund (1996) *Adoption By Lesbians And Gay Men: An Overview of the Law in the 50 States*, at 3, and *1999 Overview*, at 9 <http://www.lambdalegal.org/sections/library/adoption.pdf>.

8617[3]), as the Court of Appeal required here, nor insisted that this language be given literal effect. To do so would frustrate the overriding purpose of the adoption laws – to serve the best interests of individual children – by severing relationships that children depend upon and that the parties intend should remain intact, for no purpose consistent with the statute. In this setting, the conventional concern with ending birth ties in order to secure a new and different, adoptive family is absent. Instead, the same family is to continue, and seeks simply to secure the parental relationships that already exist.

In taking this approach, contemporary courts have been faithful to precedent established generations ago. In 1925, the California Supreme Court permitted a stepparent adoption with no termination of the birth parent's rights, despite the absence of any express statutory authorization to do so, and despite the literal language of the predecessor statute to Section 8617. (*Marshall v. Marshall* (1925) 196 Cal. 761, 767 [239 P. 36].) In doing so, the Court secured a family in fact. Although the adoption statutes now acknowledge stepparent adoptions (Fam. C. §§ 9000-9007), the Legislature has never found it necessary to codify an explicit exception to

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[3] Section 8617 provides: "The birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child." All statutory citations are to the California Family Code, unless otherwise stated.

the termination-of-rights presumption either in those sections or in Section 8617, even though strict construction or literal application of Section 8617 would still require termination of the biological parent's rights in stepparent adoption cases.

Second-parent adoptions follow the same legal path. They proceed by virtue of the same judicial authority and discretion understood for decades to have been granted to the courts by the legislature with the adoption statutes.

In stepparent and second-parent adoption cases alike, the provision for termination of a birth parent's rights is not enforced literally, following the rule of construction that "[t]he literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335 n.7 [283 Cal.Rptr. 893, 813 P.2d 240] (citations omitted); *see also Dowling v. Zimmerman* (4th App. Dist. 2001) 85 Cal.App.4th 1400, 1427 [103 Cal.Rptr.2d 174] ("plain meaning rule" does not bar inquiry into whether "'literal meaning of a statute comports with its purpose'"; court must "'avoid an interpretation that would lead to absurd consequences.'") (citations omitted).)

As thousands of California court decisions have recognized, it would be absurd indeed to require the birth parent to terminate her parental rights

in cases in which a couple is raising a child together, often after having planned for the child from before conception.[4] Such a construction would defeat the parents' intent and the best interests of innumerable California children who would be left needlessly with only one legal parent.

This Court has long warned against "blind application" of literal statutory language in adoption cases in ways that disrupt the relationships upon which children rely and ***cause*** the very "uncertainty and instability" the adoption law is intended to ***cure***. (*E.g., San Diego County Dept of Public Welfare v. Superior Court* (1972) 7 Cal.3d 1, 13.) Refusal of second-parent adoptions would be "a loss of the spirit of the ***whole*** adoption system while holding to the letter of ***part*** of it." (*Adoption of Michelle T.* (1975) 44 Cal.App.3d 699, 710 (emphasis in original).)

As this Court recognized in *Marshall* by permitting stepparent adoptions as yet unrecognized by statute, rules designed for the typical adoption context, "where the child receives two new parents and both of the natural parents and their families are substituted out," must not be "blindly or mechanically applied" where the "adoption has not worked any major change in the child's living arrangements." (*Reeves v. Bailey*, 53

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[4] *Cf. Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410 (where couple planned together to create child using reproductive technology, intended father would be held responsible for child support despite ending of relationship with intended mother).

Cal.App.3d at 1026 (holding that paternal grandparents' existing visitation rights were not automatically terminated by statute when maternal grandparents adopted the child, because such visitation was beneficial to the child).)

2. California law does not deny adoption based on the marital status of functional or prospective parents.

The fact that parents in second-parent adoption cases are unmarried does not warrant a deviation from settled law and practice that has been working well in the adoption area for a very long time. Under the plain language of the Family Code, prospective adoptive parents are not disqualified for being unmarried. Section 8600 provides for adoption of a "minor" by an "adult." Section 8542 defines "prospective adoptive parent" simply as "a person who intends to file a petition to adopt a child who has been placed in that person's physical care," without any mention of the prospective parent's marital status.

In addition, two adults can adopt together. Section 10 states that "[t]he singular number includes the plural, and the plural, the singular." Thus, in one proceeding, two unmarried "adults" can adopt the same child simultaneously, just as, by the same rule, more than one "minor" can be adopted in the same proceeding.[5]

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[5] This reading of the code is consistent with routine practice, according to internal Department of Social Services policy. (Cal. Dept. of

In concluding that second-parent adoptions are impermissible, the appellate court wrongly relied on proposed legislation designed to make explicit the legislature's intent that unmarried individuals and couples are permitted to adopt. As Annette points out in her Opening Brief, the court's reliance was misplaced for multiple reasons, including the principle that legislative intent is often hard to glean from a bill's failure. (Annette's Opening Brief at 17.) In this case, the cited bills were introduced only in response to a draft administrative regulation that would have restricted adoptions by unmarried gay and heterosexual individuals and couples. (Register 96, No. 29 (July 19, 1996) p. 446, *cited in* Annette's Opening Brief at 20-21; *see also* Annette's Request For Judicial Notice, at Tab 1.) The bills cited by the Court of Appeal became unnecessary once the proposed regulation was abandoned.[6]

Social Svcs., All-County Letter No. 99-100 (Nov. 15, 1999); *see also* Letter of the California Attorney General to Presiding Justice Kremer in this case (August 13, 2001), at 2, 8-9.)

[6] A sampling of the major news coverage records the proposal's dismal failure. Reyes, *Adoption Proposal Sparks Sharp Debate,* Los Angeles Times (Sept. 6, 1996) section A, page 3; Gross, *Gays, Singles Also Targets Of Adoption Rule; Regulation Would Specifically Exclude Unmarried Couples*, Los Angeles Times (Sept. 8, 1996) section A, page 3; Fresno Bee (editorial), *Wrongheaded Adoption Rule; A New Rule On Adoptions From Gov. Pete Wilson Would Work Against The Interests Of Children Who Desperately Need Homes*, Fresno Bee (Oct. 12, 1996) Metro section, page B6; Ellis, *Bitterly Opposed Adoption Rule Died Quiet Death*, Los Angeles Times (Nov. 29, 1998) section A, part 1, page 1.

3. A widespread need for second-parent adoption continues despite AB25, the new domestic partner law.

Even after AB25 has further secured (rather than curtailed) adoption rights of same-sex couples, second-parent adoption remains essential, especially for children of unmarried different-sex couples, but also for many children raised by gay and lesbian couples. With an exception for seniors, California's domestic partner registry is open only to same-sex couples who live together and can register their relationships openly. (*See* Section 297.) Blood relatives and unmarried different-sex couples, as well as same-sex couples who cannot register, cannot adopt under AB25. (*Id.*)

There are many California children whose functional parents are neither legal spouses nor registered domestic partners. For example, a child may benefit greatly from adoption by a grandmother or aunt who is jointly raising a child with a birth parent who is disabled or terminally ill. Likewise, many unmarried heterosexual couples are raising children together but do not or cannot marry for religious or personal reasons, such as absent spouses in long-term institutionalization. Children in these diverse families need case-by-case flexibility, and nothing in AB25

Many of these articles reported the alarm of child welfare advocates that the proposed ban would limit severely the already inadequate pool of potential parents for children needing homes, including special needs and other hard-to-place children. *Accord* Associated Press, *Lesbian Couple Allowed To Adopt Boy With AIDS*, The Record (Nov. 16, 1989) page A28.

purports to limit their access to second-parent adoption.

Furthermore, while AB 25 has simplified the adoption process for many same-sex couples, not every child with gay or lesbian parents can obtain secure parental bonds under the new law because not all same-sex couples can, as a legal or practical matter, register as domestic partners. If one parent is a member of the United States military, as one example, the couple must consider the potential consequences under a "don't ask, don't tell" philosophy of revealing their sexual orientation and relationship by registering.[7]

Moreover, the domestic partner law also requires that the couple share a residence in order to register.[8] Yet, whatever the parents' residence(s), a second-parent adoption may be a desirable way to secure the relationship between a child and a functional parent. Parents may live apart for economic, health or other reasons that do not affect whether adoption by

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[7] Registering as domestic partners requires a declaration that a couple shares "an intimate and committed relationship," in a document that is generally subject to public disclosure. Fam. C. § 298.5; Ops. Atty. Gen. No. 00-910 (April 9, 2001). By contrast, the records of adoption cases are confidential and, as discussed throughout this section, a petition for a second-parent adoption does not depend upon – nor constitute a statement that one is part of – any particular family structure.

[8] The Court of Appeal's suggestion that couples "ratify" their adoptions through the stepparent adoption procedure available to registered domestic partners would be impractical or impossible for many not just for financial reasons, but also because they now live out-of-state, the birth parent has died or the couple's relationship has dissolved.

the second parent is in the child's best interest.

It seems likely that, in 1925, opinions varied about whether the sort of divorce, remarriage and redivorce that set the stage in *Marshall* was ideal or to be encouraged. But the liberal interpretation applied there looked to the reality of children's lives, and put that first. This approach is even more appropriate today because, as the U.S. Supreme Court has observed, "[t]he demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household." (*Troxel v. Granville* (2000) 530 U.S. 57, 63 [120 S.Ct. 2054, 2059].)

The census figures for 2000 illustrate the point. Of California's 11.5 million households, 68.9% are considered "families," only 26% of which consist of a married couple and their minor children.[9] The number of children being raised by unmarried heterosexual couples has increased steadily. Census data for the country as a whole show that, in 1960, there were 440,000 unmarried, different-sex-couple families (representing 0.8% of the population), and about 200,000 of these homes included minor

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[9] U.S. Census Bureau, *DP-1. Profile of General Demographic Characteristics: 2000, Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data, Geographic Area: California* <http://factfinder.census.gov/servlet/QTTable?ds_name=DEC_2000_SF1_U&geo_id=04000US06&qr_name=DEC_2000_SF1_U_DP1>. *See generally* U.S. Census Bureau, *Census 2000 Data for the State of California* (June 10, 2002) <http://www.census.gov/census2000/states/ca.html>.

children. In the census just completed, there were 4.7 million unmarried, different-sex-couple families (4.5% of the population), and nearly 1.7 million of them included minor children.[10]

In addition to the millions of children being raised by unmarried heterosexual couples, millions more live with their grandparents. Between 1980 and 2000, the number grew nationally from 2.3 million to 3.8 million children.[11] According to the current census, 1.73 million of them, or 45%, have their mother present in the home; but 1.36 million, or 35%, are being raised by their grandparents without either of their parents present.[12]

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[10] American Association for Single People ("AASP"), *Unmarried-Couple Households, by Presence of Children: 1960 to 1999, 'The Increase in Unmarried-Couple Households' (opposite-sex couples),* <http://www.singlesrights.com/Census%202000/ households-type-trends-unmarried-coupls.htm>; *see also* U.S. Census Bureau, *Families and Living Arrangements, Current Population Survey (CPS) Reports* (Feb. 4, 2002) <http://www.census.gov/ population/www/socdemo/hh-fam.html>; U.S. Census Bureau, *Unmarried-Couple Households, by Presence of Children: 1960 To Present* (January 7, 1999) <http://www.census.gov/population/ socdemo/ms-la/tabad-2.txt>.

[11] AASP, *Grandchildren Living in the Homes of Their Grandparents, "Grandparents are Raising Millions of Grandchildren"* <http://www.singlesrights.com/Census%202000/households -type-trends-grandparent-grandchildren.htm>.

[12] *Id.* In California now, nearly one million households have grandparents living with one or more minor grandchildren; in about one-third of the total (300,000 families), grandparents are fully responsible for the care of the children. *See* U.S. Census Bureau, *DP-2. Profile of Selected Characteristics: 2000, Geographic area: California* (2000) <http://www.census.gov/Press-Release/ www/2002/dptables/2k06.xls>; *see also* U.S. Census Bureau, *Families and Living Arrangements, Current*

Based on the 1998 Current Population Reports of the U.S. Census Bureau, Stanford Law School family and child welfare expert Michael Wald calculated that California is home to roughly 400,000 same-sex couples, "a large number of whom are raising children." (Michael S. Wald, *Same-Sex Couples: Marriage, Families, and Children* (December 1999) at 9 <http://www.law.stanford.edu/faculty/wald/final_samesex.pdf>.) According to the 2000 census, California has the largest number of self-reported, same-sex unmarried-partner couples in America.[13] These data showed them to be distributed throughout our state, living in every county.[14]

Population Survey (CPS) Reports (Feb. 4, 2002) <http://www.census.gov/population/www/socdemo/hh-fam.html>.

[13] David M. Smith and Gary J. Gates, *Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households, A Preliminary Analysis of 2000 United States Census Data* (2001) (Table 1 — State Totals and 1990 Comparisons) <http://www.hrc.org/familynet/documents/L%20census.pdf>.

[14] *See id.* at Table 4 — Counties With No Gay Or Lesbian Couples. Due to methodological changes made by the Census Bureau and other issues, there are limits to the conclusions that can be drawn from the numbers of same-sex couples reported by this census. *See* U.S. Census Bureau, *Technical Note on Same-Sex Unmarried Partner Data from the 1990 and 2000 Censuses* (2002) <http://www.census.gov/population/www/cen2000/samesex.html>; *see also* Human Rights Campaign, *Same-sex partner households (by state)* (2002) <http://www.hrc.org/familynet/chapter.asp?article=335> (discussing the "dramatic increase" in the 2000 totals from the 1990 census, but explaining the multiple reasons that the 2000 totals are still likely to represent an undercount of more than 60%). An undercount of these couples does not, of course, affect the accuracy of data showing gay and lesbian couples living in every county in California.

In California, diversity has long been a social and cultural hallmark; and the census data show the variety among family structures is no exception.[15] The flexible, individualized approach traditionally used in adoption cases continues to be needed and to work well, whereas a one-size-fits-all rule would fail our state's children. The lower courts, aided by child welfare professionals, should remain empowered to conduct the individualized assessments by which they ensure that each child's best interests are served.

4. California law does not deny protection to children's relationships with their parents based on the parents' sexual orientation.

As AB25 demonstrates, there is nothing about gay and lesbian parents per se that warrants special concern. It is settled law that California courts do not base decisions about the legal relationships between parents and their children upon sexual orientation. (*See, e.g., Nadler v. Superior Court* (1967) 255 Cal.App.2d 523, 525 [63 Cal.Rptr. 352] (homosexuality not grounds per se to deny primary parent custody of children); *In re Marriage of Birdsall* (1988) 197 Cal.App.3d 1024, 1031 [243 Cal.Rptr. 287] (fact that father was gay was not grounds for restricting visitation rights). *Accord In re Brian R* (1991) 2 Cal.App.4th 904, 917 [3 Cal.Rptr.2d

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[15] *See generally* AASP, *Households by Type: 1980 - 2000: "Family Diversity Has Become The Norm"* <http://www.singlesrights.com/Census %202000/households-type-trends-family%20diversity.htm>.

768, 774] (lesbian couple was not in any way disqualified by their sexual orientation from adopting the foster child in their care). *See also Nancy S. v. Michele G.* (1991) 228 Cal.App.3d 831, 841 n.8 [279 Cal.Rptr. 212] (explaining that "[w]e see nothing in these provisions that would preclude a child from being jointly adopted by someone of the same sex as the natural parent," and citing *Marshall*, 196 Cal. at 766-67); *Guardianship of Olivia J.* (2000) 84 Cal.App.4th 1146, 1153 n.7 [101 Cal.Rptr.2d 364, 369 n.7] (following break-up of lesbian relationship, requiring standard factual determination, without regard to sexual orientation of adults, of whether child was suffering harm warranting creation of guardianship; "we see nothing in the language of Probate Code section 1510 to suggest that appellant's status as a nonparent, much less her status as a former participant in a lesbian relationship, precludes her from initiating such proceedings as a person on behalf of the minor.").)

For years now, leading national organizations like the American Psychological Association, the National Association of Social Workers, the Child Welfare League, the American Academy of Child and Adolescent Psychiatry and others have urged courts to focus on the needs of children and the quality of parenting, rather than parental sexual orientation, because

sexual orientation is irrelevant to effective parenting.[16]

The American Academy of Pediatrics ("AAP"), a venerable leader on children's welfare, joined these groups this past winter. (*See* AAP, Committee on Psychosocial Aspects of Child and Family Health, *Coparent or Second-Parent Adoption by Same-Sex Parents* (Feb. 2002) 109 Pediatrics 339 ("AAP Policy Statement").[17]) After a careful survey of the extensive literature, the AAP confirmed that children are not harmed by having lesbian or gay parents, but do face needless legal, financial and emotional vulnerabilities in the absence of secure legal ties to both parents. The AAP report echoes the conclusions in thousands of California court proceedings on adoption petitions concerning children with lesbian or gay parents: "Children deserve to know that their relationships with both of their parents are stable and legally recognized. This applies to all children,

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[16] *See* American Psychological Association, *Resolution on Child Custody and Placement* (1977) 32 Am. Psychologist 432; National Association of Social Workers, *Policy Statement on Foster Care and Adoption* (1987); Child Welfare League, Standards for Adoption Services (1988); American Academy of Child and Adolescent Psychiatry, *Policy Statement on Gay, Lesbian, and Bisexual Parents* (June 1999) <http://www.aacap.org/ publications/policy/ps46.htm>.

[17] The AAP Policy Statement is also available at <http://www.aap.org/ policy/ 020008.html>. *See also* Ellen C. Perrin, MD, and the American Academy of Pediatrics Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents* (Feb. 2002) 109 Pediatrics 341 <http://www.aap.org/policy/ 020008t.html>.

whether their parents are of the same or opposite sex. ... Denying legal parent status through adoption to coparents or second parents prevents these children from enjoying the psychological and legal security that comes from having two willing, capable, and loving parents." (AAP Policy Statement, 109 Pediatrics at 339.) This past May, the American Psychoanalytic Association issued a similar call for adoption law reform in the interest of children whose parents are gay or lesbian.[18]

Given the familiarity of so many in the court and child welfare systems with these families, it is not surprising that marital status and sexual orientation are not seen as justifying a more rigid application of the

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[18] The American Psychoanalytic Association explains:

> [T]he salient consideration in decisions about parenting, including conception, child rearing, adoption, visitation and custody is the best interest of the child. Accumulated evidence suggests the best interest of the child requires attachment to committed, nurturing and competent parents. Evaluation of an individual or couple for these parental qualities should be determined without prejudice regarding sexual orientation. 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.

American Psychoanalytic Association, Committee on Gay and Lesbian Issues, *Position Statement on Gay and Lesbian Parenting* (2002) <http://www.apsa-co.org/ctf/cgli/parenting.htm>.

adoption law. To the contrary, all three branches of government in California have approved adoptions by unmarried lesbian or gay couples, when they are in the best interests of individual children. The courts have been granting second-parent adoptions for more than fifteen years; the Department of Social Services has prepared forms to facilitate them (*see* Cal. DSS, All-County Letter No. 99-100 and August 13, 2001 Letter of the Attorney General to Presiding Justice Kremer); and the Legislature expressly ratified the practice by passing AB25.[19]

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[19] Despite this thorough support in California policy and family law practice, *amicus curiae* Proposition 22 Legal Defense and Education Fund argues that second-parent adoption is not permissible because both these adoptions and also the domestic partner law conflict with Family Code § 308.5, which concerns recognition of same-sex marriages celebrated outside California. The argument is without merit.

Section 308.5 is unrelated to adoption, which exists to protect the best interests of children. Adoption has no effect on the legal status of adult relationships. The adoption statute does not qualify petitioners based on marital status, and it was unamended by creation of Section 308.5. Moreover, arguments aimed at overturning AB25 should not be heard in a case in which the adoption does not rely on that law. Nor could anyone reasonably confuse marriage and domestic partner registration. The dozen protections that come with domestic partner registration are a far cry from the comprehensive package of marital privileges and protections comprising hundreds of state law rights and more than 1,000 under federal law. *See* Shannon Minter and Courtney Joslin, *Left At the Altar: A Partial List of Marital Rights and Responsibilities That Are Denied To Same-Sex Couples and Their Families in California* (2002) <http://www.nclrights.org/pubs/altar2002.pdf>; Letter of Barry R. Bedrick, Associate General Counsel, United States General Accounting Office, to Representative Henry J. Hyde, dated January 31, 1997, conveying report # GAO/OGC-97-16 itemizing 1,049 "benefits, rights and privileges" that come with marriage under federal law. <http://www.gao.gov/archive/1997/og97016.pdf>.

For all these reasons, the Court should affirm that California law permits second-parent adoptions to be granted in appropriate cases, where they will protect individual children, and without discrimination based on irrelevant personal characteristics such as marital status or sexual orientation of the existing or prospective parents.

B. Other States With Adoption Laws Similar To California's Allow Second-Parent Adoptions For Reasons That Are Persuasive Here.

Courts in more than half the states, including five states and the District of Columbia by appellate court decisions cited here, have approved second-parent adoptions. (*See, e.g., In the Matter of Jacob / In the Matter of Dana* (1995) 86 N.Y.2d 651 [660 N.E.2d 397, 636 N.Y.S.2d 716]; *In the Matter of the Adoption of Two Children by H.N.R.* (N.J. App. Div. 1995) 285 N.J. Super. 1 [666 A.2d 535]; *In re Petition of K.M. and D.M. to Adopt Olivia M.* (1995) 274 Ill. App. 3d 189 [653 N.E.2d 888, 210 Ill. Dec. 693];

Of course, no state yet recognizes same-sex marriage, yet many allow second-parent adoption. (See Section B., *infra*.)

Although the argument of equivalency *amicus* presents has been advanced in a great many challenges to local ordinances concerning domestic partner benefits for employees, courts rarely have found it persuasive. *See, e.g., S.D. Myers v. City of San Francisco* (N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 8748 (applying California law and rejecting claim that local domestic partner benefits ordinance creates conflict with state marriage law). *See also Tyma v. Montgomery County* (Md. App. Ct. 2002) 2002 Md. LEXIS 345, *28-29 (discussing similar decisions in other states).

In re M.M.D. & B.H.M. (D.C. App. 1995) 662 A.2d 837; *Adoption of Tammy* (1993) 416 Mass. 205 [619 N.E.2d 315]; *Adoptions of B.L.V.B. and E.L.V.B.* (1993) 160 Vt. 368 [628 A.2d 1271].)[20]

The appellate decisions of other states contain common themes that are useful to consider here. One prominent theme is recognition of the many ways that second-parent adoptions benefit children, in keeping with the laws' overall purposes. The Supreme Judicial Court of Massachusetts summarized these benefits as follows:

> Adoption will not result in any tangible change in Tammy's daily life; it will, however, serve to provide her with a significant legal relationship which may be important in her future. At the most practical level, adoption will entitle Tammy to inherit from Helen's family ... and from Helen ..., to receive support from Helen, who will legally be obligated

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[20] *See generally* Jane S. Schacter (2000) *Constructing Families in a Democracy: Courts, Legislatures and Second-Parent Adoption*, 75 Chi.-Kent L. Rev. 933, 934 (among other things, noting that "the Uniform Adoption Act proposed by the National Conference of Commissioners on Uniform State Laws has approved second-parent adoption," and quoting one commentator's observation that "second-parent adoption has 'become the unmistakable trend of the law's development in this area.'") (citing Craig W. Christensen (1997) *Legal Ordering of Family Values: The Case of Gay and Lesbian Families*, 18 Cardozo L. Rev. 1299, 1405).

Although other appellate courts have had the chance to address the question before California's, second-parent adoptions originated here based on this state's sensible, child-centered jurisprudence and its trial courts' familiarity with families headed by gay and lesbian couples. As California was the leader in recognizing the validity and value for children of these adoptions, as it has been on many family diversity issues, one may expect courts in other states to take note of this Court's analysis here when, in the future, considering the same question under their similar laws.

> to provide such support, to be eligible for coverage under Helen's health insurance policies, and to be eligible for social security benefits in the event of Helen's disability or death.
>
> Of equal, if not greater significance, adoption will enable Tammy to preserve her unique filial ties to Helen in the event that Helen and Susan separate, or Susan predeceases Helen. As the case law and commentary on the subject illustrate, when the functional parents of children born in circumstances similar to Tammy separate or one dies, the children often remain in legal limbo for years while their future is disputed in the courts. ... Adoption serves to establish legal rights and responsibilities so that, in the event that problems arise in the future, issues of custody and visitation may be promptly resolved by reference to the best interests of the child within the recognized framework of the law.

(*Adoption of Tammy*, 619 N.E.2d at 320-21 (internal citations omitted); *see also Jacob/Dana*, 660 N.E.2d at 399-400 (listing the "advantages" that accrue to children by adoption, including financial and practical concerns, as well as emotional security).)

A second theme is that courts should not judge or penalize children for the circumstances of their parents. The Vermont Supreme Court explained that it was "furthering the purposes of the statute as was originally intended" by allowing children whose parents are lesbian or gay to have the security of a legal relationship with both of their actual parents. (*Adoptions of B.L.V.B. and E.L.V.B.*, 160 Vt. at 375.) As the court observed, "[t]he intent of the legislature was to protect the security of family units by defining the legal rights and responsibilities of children who

find themselves in circumstances that do not include two biological parents." (*Id*. at 373.) Noting that it had not been "called upon to approve or disapprove" of the parents' relationship (*id.* at 376), the Vermont court stressed that its "paramount concern should be with the effect of our laws on the reality of children's lives." (*Id*.) This principle has long been respected by California courts in adoption cases. (*See, e.g., In re De Leon* (1924) 70 Cal.App. 1, 6-7 [232 P. 738] (mother cannot be denied right to withhold consent to adoption, or denied custody of minor, based on literal reading of statute taking such right from parent guilty of adultery and "cruelty" to her former spouse).)[21]

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[21] It should be noted that any rule purporting to limit the opportunity of children to establish secure legal ties with their parents based solely on their parents' marital status would raise serious constitutional questions. First, adverse classification based upon the parents' marital status implicates equal protection guarantees. *See Gomez v. Perez*, 409 U.S. 535, 538 (1973) ("a State may not invidiously discriminate against [children of unmarried parents] by denying them substantial benefits accorded children generally."); *New Jersey Welfare Rights Org. v. Cahill*, 411 U.S. 619, 619-20 (1973) ("[A]lthough the challenged classification turns upon the marital status of the parents as well as upon the parent-child relationship, in practical effect it operates almost invariably to deny benefits to illegitimate children while granting benefits to those children who are legitimate.").

In addition, children have a core, constitutionally protected interest in preserving the emotional attachments they develop with adult parental figures from shared daily life, in many cases since birth. *Smith v. Organization of Foster Families*, 431 U.S. 816, 844 (1977); *Michael H. v. Gerald D.*, 491 U.S. 110, 124 n.3 (1989) (plurality) ("The family unit accorded traditional respect in our society ... also includes the household of unmarried parents and their children").

A related theme, consistent with *Marshall*, 196 Cal. 761, and other cases cited, is to avoid elevating literal language over substantive goals. Thus, the highest court in New York State determined that the state's provision regarding termination of parental rights did not erect a barrier to second-parent adoption when read with the rest of the statute and in historical context (just as sections 8612(c) and 8617 of the California Family Code should be read). The *Jacob/Dana* court concluded that it would be "anomalous" to give the termination provision "an unnecessarily literal reading" that would defeat the intentions of intact families. (660 N.E.2d at 401-05.) In the court's words, "it is clear that [the termination provision], designed as a shield to protect new adoptive families, was never intended as a sword to prohibit otherwise beneficial intrafamily adoptions by second parents." (*Id*. at 405.)

Massachusetts likewise ensures that the existing parent's pre-existing rights are not terminated despite the statutory text. *Adoption of Tammy* holds:

> the Probate Court has jurisdiction to enter a decree on a joint adoption petition brought by the two petitioners when the judge has found that joint adoption is in the subject child's best interests. We further conclude that, when a natural parent is a party to a joint adoption petition, that parent's legal relationship to the child does not terminate on entry of the adoption decree.

(619 N.E.2d at 321) (construing a statute that defines who may adopt

similarly to California).

The Vermont Supreme Court arrived at the same conclusion, reasoning this way:

> the termination provision "anticipates that the adoption of children will remove them from the home of the biological parents ... The legislature recognized that it would be against common sense to terminate the biological parent's rights when that parent will continue to raise and be responsible for the child, albeit in a family unit with a parent who is biologically unrelated to the child."

(*B.L.V.B. and E.L.V.B.*, 160 Vt. at 372-73.) The Vermont court concluded that it would be an "unreasonable and irrational result" to read the statute so narrowly that adoptions which comport with the statute as a whole and are "indisputably in the best interests of children" necessarily must be defeated. (*Id.* at 373. *See also In re M.M.D. & B.H.M.*, 662 A.2d at 860 (under District of Columbia case law, courts should not interpret statutory language "in a way that imposes 'absurd results' and 'obvious injustice.'") (citation omitted).)[22]

The Wisconsin decision cited by Sharon (Answer Brief at 11) was based upon a threshold jurisdictional requirement in the Wisconsin statutes

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[22] The Illinois Appellate Court, reaching the same conclusion after observing that the plain language of the statute permitted the adoption and that the state had no bar to adoptions by lesbians and gay men, noted simply that its role was not to "infer limitations or exceptions. ... Presumably the General Assembly could have written the language more restrictively if it had wanted to." *In re Petition of K.M. and D.M.*, 274 Ill.App.3d at 194-95, 204.

that does not exist in California law. Specifically, Wisconsin law provides that, in order to be "eligible for adoption," the child, at the time the adoption is initiated, must have no legal parents. *(In the Interest of Angel Lace M.* (1994) 184 Wis.2d 492, 508-509 [516 N.W.2d 678] (construing Wis. Stat. § 48.81(1), which bars consideration of an adoption petition unless the minor's "parental rights have been terminated.").) California and most other states do not have a threshold eligibility requirement of this type that prevents consideration of an adoption petition unless all the child's parental relationships already have been severed.[23]

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[23] Wisconsin's jurisdictional threshold regarding "eligibility for adoption" is not entirely unique. Colorado and Nebraska also have declined to permit second-parent adoptions based on similar requirements. *Adoption of T.K.J. and K.A.K.* (Colo. Ct. 1996) 931 P.2d 488, 491 (interpreting Colo. Rev. Stat. § 19-5-203, which defines children who are "available" for adoption as those for whom all parental rights have been terminated; Colorado courts are not permitted to ignore statutory text); *In re Adoption of Luke* (2002) 263 Neb. 365 [640 N.W.2d 374] (explaining that the relinquishment requirement contained in Neb. Rev. Stats. §§ 43-101(1) is jurisdictional).

Connecticut had a similar threshold requirement (see *Adoption of Baby Z.* (1999) 247 Conn. 474, 514 [724 A.2d 1035] (discussing former Conn. Gen. Stats. §§ 45a-727 and 45a-724). The Connecticut legislature has since repealed that requirement and second-parent adoptions currently are available in that state. Public Act No. 00-228 (repealing Conn. Gen. Stats. §§ 45a-724 and 45a-727; making legislative findings, *inter alia*, that "[t]he best interests of a child are promoted when the child is part of a loving, supportive and stable family, whether that family is a nuclear, extended, split, blended, single parent, adoptive or foster family"; and authorizing a legal parent to consent to the adoption of a child by another person "who shares parental responsibility for the child" with the legal parent), codified at 2000 Ct. P.A. 228, 2000 Ct. ALS 228.

V. CONCLUSION

More than a century ago, the Supreme Court of California described the approach that should be taken when a technicality of the adoption laws appears to conflict with the laws' stated purpose, admonishing practitioners and courts "to keep always in view the general scope, object, and purpose of the law rather than the mere letter." (*In re Johnson's Estate*, 98 Cal. at 536.) The Court emphasized that slavish adherence to literal language

> will often defeat a remedy or destroy a right which it was the principal intention of the legislature to create or provide. Where the statute directs an act to be done in a certain way, or at a certain time, and a strict compliance as to time or form does not appear to the judicial mind to be essential, the proceedings are held valid, though the command of the statute has been disregarded.

(*Id.* at 539.)

For all the foregoing reasons, *amici* ask this Court to confirm that California's Family Code permits second-parent adoptions, and to remand the case to the Court of Appeal with directions either to consider the other legal questions presented by Sharon's writ petition, or to further remand the

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In addition to the Wisconsin and Nebraska decisions, which were based on statutory schemes very different from California's, Sharon has cited a Pennsylvania intermediate appellate court decision rejecting second-parent adoptions. *In re Adoption of C.C.G. and Z.C.G.* (2000) 2000 Pa. Super. 338 [762 A.2d 724]; *see* Answer Brief at 11. That decision has been vacated pending review by the Pennsylvania Supreme Court. Order granting Petition for Allowance of Appeal posted at <http://www.courts.state.pa.us/OpPosting/Supreme/out/731-732wal2000.pdf>.

matter to the superior court for consideration in the usual manner of the evidence that bears on whether or not the adoption petition should be granted in this case.

Dated: July 3, 2002

Respectfully submitted,

CHILDREN OF LESBIANS AND GAYS EVERYWHERE, THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES, THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, FAMILY MATTERS, FAMILY PRIDE COALITION, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, LHR: THE LESBIAN AND GAY BAR ASSOCIATION, THE LOS ANGELES GAY & LESBIAN CENTER, THE NATIONAL CENTER FOR LESBIAN RIGHTS, OUR FAMILY COALITION AND THE POP LUCK CLUB

By: _____/s/_____
Jennifer C. Pizer
Attorney for *Amici Curiae*

APPENDIX A

Amici Curiae are Children Of Lesbians And Gays Everywhere, Family Pride Coalition, American Civil Liberties Union Foundation of San Diego and Imperial Counties, American Civil Liberties Union Foundation of Southern California, Bay Area Lawyers for Individual Freedom, Family Matters, Lambda Legal Defense and Education Fund, LHR: the Lesbian and Gay Bar Association, the National Center for Lesbian Rights, and Our Family Coalition.

Children Of Lesbians And Gays Everywhere ("COLAGE") is a national and international organization dedicated to supporting young people with gay, lesbian, bisexual, and transgender parents. Founded in 1990 and now with over 30 national and international chapters and affiliates, COLAGE provides diverse educational and support services, fosters youth leadership, and engages in many forms of advocacy against sexual orientation- and gender-based discrimination. COLAGE strives to build a strong sense of community for its more than 7,000 member families, while enhancing their public visibility in order to dispel prejudice. COLAGE believes its members are the living proof that it is love, caring and commitment that makes for strong, healthy families.

The **American Civil Liberties Union Foundation of San Diego and Imperial Counties** ("ACLU-SD") is a nonprofit, nonpartisan organization with approximately 3,500 members dedicated to the promotion and protection of civil rights and personal liberties under the United States Constitution, the California Constitution, and federal and state laws. It is a regional affiliate of the American Civil Liberties Union, a nationwide organization with approximately 300,000 members dedicated to the same purposes. The ACLU-SD has participated, as direct counsel and as *amicus curiae*, in numerous civil liberties cases in the federal and state courts of California involving the legal rights and vulnerabilities of lesbians and gay men, including those with children.

The **American Civil Liberties Union Foundation of Southern California** ("ACLU-SC") is an affiliate of the American Civil Liberties Union, a national organization formed to advocate for individual rights and equal justice, and guard against abuse of government power. The ACLU-SC is one of the largest ACLU affiliates in the country, with over 25,000 individual members throughout central and southern California. The ACLU-SC seeks to extend constitutional rights to groups that have

historically been denied them. Specifically, the ACLU has advocated in numerous cases and *amicus briefs* for equal protection and familial privacy rights for non-traditional families, including families headed by gay and lesbian couples.

Bay Area Lawyers for Individual Freedom ("BALIF") is a minority bar association of more than 500 lesbian, gay, bisexual and transgender members of the San Francisco Bay Area legal community, promoting the professional interests of its members and the legal interests of the lesbian, gay, bisexual and transgender community.

Family Matters promotes and sustains the well-being of families with lesbian moms, gay dads and those considering parenthood in San Diego County. With over 450 families involved and membership growing everyday, Family Matters sponsors a range of programs including "Teen and Parents" potlucks, "Kite Day and Family Picnics" in the park, the "Children's Garden," and support groups for new parents and those considering parenthood. Family Matters participates in this case to underscore the importance of protecting the rights of children and their parents. Because many California families are not protected under AB25, second-parent adoption needs to remain valid and available.

Family Pride Coalition ("Family Pride") is a national, membership-based coalition of 178 parenting groups and over 4,000 individual members across the country devoted to providing support to and advocacy for families with lesbian, gay, bisexual, and transgender (LGBT) parents. In California, Family Pride works with twelve separate parenting groups representing more than 1,200 families. Family Pride seeks to advance the well-being of LGBT parents and their families by enhancing their sense of belonging and security, and by advocating for their protection within the legal system. Second-parent adoption has been one of the primary vehicles for this protection, allowing families to establish legal bonds that afford children and adults a form of security similar to the protections other families enjoy through marriage. These are not special rights, but civil rights that support the healthy development of every family in this country.

Lambda Legal Defense and Education Fund ("Lambda") is the nation's oldest and largest non-profit legal organization working to secure full civil rights for lesbian, gay, bisexual and transgendered persons. Founded in 1973, Lambda has expertise in all substantive areas of law involving issues of sexual orientation discrimination. In particular, Lambda

has appeared as counsel or as *amicus curiae* in scores of cases involving the protection of parent-child bonds in families established by lesbians, gay men and bisexuals, including numerous cases addressing whether the laws of particular states permit second-parent adoptions. Lambda is headquartered in New York and has regional offices in Los Angeles, Chicago, Atlanta and Dallas.

LHR: The Lesbian and Gay Bar Association is an affiliate of the Los Angeles County Bar Association, and is committed to equal rights for gay, lesbian and bisexual people, including in family relationships. LHR is dedicated to providing a strong lesbian, gay and bisexual presence in the legal profession and in the community at large through education, legal advocacy, and political and civic activity.

The **L.A. Gay & Lesbian Center** (the "Center") is the world's largest lesbian, gay, bisexual and transgender (LGBT) organization. In existence since 1971, the Center is home to a spectrum of free and low-cost health, mental health, HIV/AIDS treatment and prevention, policy advocacy, legal, social, cultural, and educational services, and unique programs for youth and seniors. Among them, the Center's Family Services Program is a resource for prospective and existing LGBT parents and their children by sponsoring a broad range of recreational and social activities, educational forums, and support groups. Since 2001, over 1,500 families in Los Angeles County have taken advantage of the Center's family programming, which includes a monthly "Family Day In The Park" and workshops on domestic partnerships and second-parent adoptions. The Center's dedication to meeting the needs of the LGBT community, as well as its specific services for LGBT families, give it strong interests in the present case.

The **National Center for Lesbian Rights** ("NCLR") is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbians and their families. Since its founding in 1977, NCLR has played a leading role in ensuring that the increasing number of children in families headed by lesbian or gay parents have the same legal protection and support enjoyed by children in non-gay-parent families. NCLR has served as counsel for petitioners in numerous second-parent adoption proceedings throughout the country, as well as in a broad range of custody and visitation disputes concerning the ability of lesbian or gay parents to maintain strong legal and emotional bonds with their children.

Our Family Coalition ("OFC") is a San Francisco Bay region membership organization dedicated to educating, supporting, organizing and advocating for families headed by gay, lesbian, bisexual, and transgender parents. Founded in 1996, OFC now has over 600 households as members throughout the nine county bay area region. OFC promotes the civil rights and well-being of our families through regular and exciting social and educational events, a strong on-line presence, a newsletter and resource/referral list. We believe that showing family diversity -- day-to-day in settings as familiar as schools and playgrounds -- creates a more thoughtful and accepting world for all people. Many of our members have created and/or intend to create and protect their families by adoption in California.

The **Pop Luck Club** ("Pop Luck") was founded in Los Angeles in 1998 to create a sense of community and support in which children could interact with gay parent role models in a comfortable setting, and in which fathers and prospective fathers could discuss the unique problems they face as gay men raising children. In three short years, Pop Luck has blossomed into the largest known gay fathers organization in the world, with hundreds of families and strong continued growth. Pop Luck sponsors special events such as Resource Days, where community leaders speak on relevant topics, participation in annual Gay Pride Parades, and joint events with Lesbian Moms. The group organizes many activities for children, including baseball games, amusement park outings and much more. Through the simple tradition of sharing food and stories, Pop Luck has evolved into a substantial voice, helping to support our wonderfully diverse community and sharing positive images of gay parenting with the community at large.

CERTIFICATION OF BRIEF FORMAT

Pursuant to California Rules of Court 14(c)(1) and 29.3(d), I hereby certify that the foregoing brief was produced using WordPerfect 9.0 and that the brief, inclusive of the cover pages, application, tables, footnotes, and appendix, contains 13,067 words based on the WordPerfect word count.

Dated: July 3, 2002

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND EDUCATION FUND

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