

No. 11-46

IN THE
Supreme Court of the United States

OREN ADAR, Individually and as Parent and
Next Friend of J. C. A.-S., a minor;
MICKEY RAY SMITH, Individually and as Parent
and Next Friend of J. C. A.-S., a minor;
v. *Petitioners,*

DARLENE W. SMITH, in Her Capacity as
State Registrar and Director, Office of
Vital Records and Statistics, State of Louisiana
Department of Health and Hospitals,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF FOR *AMICI CURIAE* ADOPTION AND
CHILDREN'S RIGHTS ORGANIZATIONS,
INSTITUTES, AND LAW CLINICS
IN SUPPORT OF PETITIONERS**

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QUESTIONS PRESENTED

The State of Louisiana has a statute providing that all children born in the State, if adopted, are entitled to receive revised birth certificates showing their adoptive parents. The State Registrar refused to issue such a revised certificate to a child who had been adopted in New York by an unmarried couple. The Registrar explained that this decision was based on the State's disapproval of adoptions by unmarried couples. The following questions are presented:

1. Whether the Fifth Circuit erred in holding that a state does not violate the Full Faith and Credit Clause when an executive official selectively disregards some out-of-state judgments of adoption based on policy assessments of the wisdom of those judgments.

2. Whether the Fifth Circuit erred in holding that 42 U.S.C. § 1983 does not provide a remedy for a violation of the Full Faith and Credit Clause.

3. Whether the court of appeals erred in holding that a state does not violate the Equal Protection Clause of the Fourteenth Amendment when, based on disapproval of the parents of children adopted by unmarried parents, the state refuses to issue those children accurate revised birth certificates that it provides for all other adopted children.

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INTERESTS OF *AMICI CURIAE*¹

Amici represent numerous organizations, policy institutes and law clinics that are experts in adoption law and policy. Some provide legal services and counseling directly to children in foster care awaiting adoptive placements, as well as assistance to adoptive parents and adopted children, teens, and adults. Others promote social and legislative policies designed to protect the myriad benefits of adoption for all children and prospective parents free from unwarranted and harmful discrimination by the government. *Amici* collectively support adoption of children from foster care systems into stable, loving, and protective family relationships. They have an interest in ensuring that foster children and adopted children—some of the most vulnerable members of our society—and their new or prospective parents enjoy all the protections of the Constitution and the laws enforcing it.

SUMMARY OF ARGUMENT

The lower court’s flawed opinion relating to equal protection and Louisiana’s alleged legitimate governmental interest in its differential treatment favoring adopted children with married parents hurts some of the most vulnerable members of our society—children in nontraditional families. While, *Amici* believe that the lower court’s decision is inconsistent with

¹ The list of *Amici Curiae* (“*Amici*”) who are signatories to this brief is set out in the accompanying Appendix. Pursuant to Rule 37.6, *Amici* certify that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than *Amici*, their members and their counsel have made any monetary contribution to the preparation and submission of this brief. This brief is filed with the parties’ written consent, copies of which are on file with the Clerk.

Louisiana's own policies and procedures regarding adoption, and that the Registrar improperly denied respect to an adoption decree in violation of the obligation of Full Faith and Credit, Amici focus here on the State of Louisiana's purported justification for differential treatment of children of unmarried parents. The lower court's conclusion that Louisiana may privilege adopted children of married parents in order to express disapproval of adoptions by unmarried couples runs contrary to the best interests of children (which is the focus of this brief). The notion that children should be deprived of adoptive parents solely because those parents are in nontraditional families cannot constitute even a legitimate state interest, let alone an important one.

Overlooked by the lower court, a wealth of social research demonstrates the importance of adoption to the stable family relationship every child needs and deserves, regardless of whether or not the parental bond is formed with a married couple, an unmarried couple, or a single parent. Secure parent-child relationships are necessary to promote and protect psychological and emotional stability in developing children and young people.

The lower court's decision ignores the fact that adoption by two parents—whether married or unmarried—may also be in the best interests of the child, particularly when compared to no adoptive status at all. Not only does the child benefit from the love, affection, and guidance of two parents, but (s)he is eligible for a variety of public and private benefits owed not one, but two legally recognized parents. A two-parent home, regardless of married status, also contributes to a child's feeling of stability and permanency because, in the event of either adoptive

parent's death, the child's home and relationship with the surviving parent remains intact.

The lower court also fails to appreciate that adoption, including by parents in nontraditional families, benefits many children in foster care (although that was not the context in which this case arose). Foster care does not provide the essential ingredient for healthy development: permanent legal family status. Adopted children enjoy a security and permanency that is not found in the "limbo-situation of foster care." Adopted children are also able to develop significant attachment relationships to their adoptive parent(s)—essential components of a child's mental, emotional, and physical development—that foster children are often unable to develop due to the inconsistency of foster placements. Adoption provides children with legal, economic, and other societal benefits that long-term foster care or guardianships cannot provide.

Finally, the lower court's decision is inconsistent with Louisiana's own policies and procedures regarding adoption, as well as those of other states and national adoption policies and procedures regarding adoption. Adoption should be an individualized process and potential parent-child matches should be determined on a case-by-case basis. The lower court's conclusion that differential treatment of married and unmarried adoptive parents serves a governmental interest has without, any rational basis, entirely foreclosed the possibility that placement with *any* unmarried couple is in the best interests of *any* child. For each unmarried couple that has been denied the opportunity to adopt on the basis of his or her marital status alone, a child in foster care is denied the possibility of that adoptive home.

By refusing to respect adoptions finalized in states that recognize adoption should be assessed on a case-by-case basis, the lower court has given Louisiana unbridled authority to override and reject legal parent-child relationships formed in other states based on its own contrary view. The state's disparate treatment of children adopted by unmarried couples is not in the best interests of children, nor does it find support in the imagined state interests conceived of by the lower court—interests which have no basis in fact. The reality is, for each unmarried couple that has been denied the opportunity to adopt on the basis of his or her marital status alone, a child in foster care is denied the possibility of that adoptive home.

ARGUMENT

I. THERE ARE MORE CHILDREN WHO WANT TO BE ADOPTED THAN THERE ARE PARENTS TO ADOPT THEM.

There is no legal or factual support for the lower court's conclusion that "Louisiana may rationally conclude that having parenthood focused on a married couple or single individual—not on the freely severable relationship of unmarried partners—further the interests of adopted children." *See Adar v. Smith*, 639 F.3d 146, 162 (5th Cir. 2011) (*en banc*). To the contrary, empirical evidence demonstrates that Louisiana's policy to limit the classes of prospective parent(s) results in more children being confined to foster care, which is not in the best interests of those children.

In 2009, more than 100,000 American children in foster care were waiting for adoption.² The over-

² Admin. of Children & Families, *Adoption and Foster Care Analysis and Reporting System ("AFCARS") Report, Preliminary*

whelming majority of these children had been waiting more than a year to be adopted.³ There is a severe shortage of loving families available to provide children with a permanent home in which to be raised, particularly if the foster child is older or has special needs.⁴ States seeking adoptive homes for children in foster care report “one of the biggest obstacles is finding interested and able families to

FY 2009 Estimates as of July 2010, U.S. Department of Health and Human Services (July 2010), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.htm (114,556 children were identified as having a goal of adoption and/or whose parental rights have been terminated). This number is estimated based on weighted data from the National Survey of Adoptive Parents (NSAP) because it is considered difficult to ascertain precisely how many, and what kinds of, adoptions are completed annually. See Joan Heifetz Hollinger, *Characteristics of Adopted Children and Adoptive Families 1* (2004) (unpublished manuscript) (on file with authors).

³ Admin. of Children & Families, *supra* note 2 (nearly 100,000 children had been in foster care over a year and had not been adopted; more than a third of foster children had been waiting for adoption for several years; thousands of children had been waiting more than five years of their childhood to be adopted).

⁴ *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, Evan B. Donaldson Adoption Inst., 12 (2008), http://www.adoptioninstitute.org/publications/2008_09_-Expanding_Resources_Legal.pdf; Paige Averett et al., *An Evaluation of Gay/Lesbian and Heterosexual Adoption*, 12 *Adoption Quarterly* 129, 130 (2009) (generally speaking, older children are harder to place in adoptive homes); Cynthia R. Mabry, *Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process With an Expanded Notion of Family*, 17 *Am. U. J. Gender Soc. Pol’y & L.* 659, 662 (2009) (“Many of the children who are available for adoption are classified as special needs children.”).

adopt.”⁵ While some may argue that the current number of children waiting to be adopted is an improvement from the high numbers in earlier years, such improvement is likely attributable to the Adoption and Safe Families Act (ASFA) of 1997, which “put pressure on states to find permanent homes for children in a timely manner and placed stricter timelines on agencies to terminate parental rights.”⁶ Following the sudden increase in adoptions nationwide in the late nineties, the number of adoptions has remained steady since 2000.⁷ This remains true despite significant legislative efforts by states and the federal government to recruit adoptive families.⁸ Foster children still face an enormous obstacle in finding adoptive homes: the persistent deficit in the number of available families in comparison to the number of children in need.

One problem is that some prospective parents who are ready and willing to provide safe and stable permanent homes for foster children are still considered “unsuitable.” Historically, the “preferred placement” for a foster child has been with a married couple, “both of whom were to participate in raising the child.”⁹ In fact, many state statutes still do not

⁵ Gary J. Gates, et al., *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, Urb. Inst. (March 2007), http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf (citation omitted).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (discussing, for example, the national adoptive parent recruitment and retention campaign, AdoptUSKids).

⁹ James B. Boskey & Joan Heifetz Hollinger, *Limitations on Adoption Placement—Who May Adopt, Adoption Law and Practice* § 3.06[5] (2010).

permit adoption by unmarried couples jointly, only permitting adoption by (1) a single unmarried adult or (2) a married couple jointly. *See, e.g.*, Ark. Code Ann. § 9-8-304 (2011).¹⁰ In recent years, however, more single parents and unmarried couples have sought to provide permanent homes to foster children in need.¹¹ For instance, conservative estimates suggest that approximately two million gay men and women report an interest in providing a safe and stable permanent home for an adopted child. *See* Gary J. Gates et al., *The Williams Inst. & The Urban Inst., Adoption and Foster Care by Gay and Lesbian Parents in the United States*, The Urban Institute (March 2007), <http://www3.law.ucla.edu/Williamsinstitute/publications/FinalAdoptionReport.pdf> (citation omitted). Many of these willing adults “have the capacity to be outstanding parents,” and should not be denied the opportunity to adopt “if they are the best qualified parents available for a particular child.”¹² Depending on the specific needs of the child, adoption by a loving unmarried couple could be a superior placement option than foster care or adoption by a single parent.

¹⁰ *See also*, Lynn D. Wardle, *Comparative Perspectives on Adoption of Children by Cohabiting, Nonmarital Couples and Partners*, 32 Ark. L. Rev. 31, 47-48 (2010).

¹¹ *See, e.g.*, Hollinger, *supra* note 2, at 5 (“[S]omewhere between 11% to 24% of couples with infertility problems take some steps toward adopting a child, and almost 40% of Americans claim to have considered adoption at some point in their lives.”). With regard to the gay and lesbian community specifically, more than half of gay men (52%) would like a child and 41% of lesbians would like to have a child. *See* Gary J. Gates, et al., *supra* note 5, at 5.

¹² Boskey & Hollinger, *supra* note 9, at § 3.06[6].

II. ADOPTION—NOT FOSTER CARE— SERVES THE BEST INTERESTS OF A CHILD WHOSE BIOLOGICAL PARENTS ARE UNABLE TO RAISE HER.

A. The Benefits Of Adoption.

Completely ignored by the lower court is the fact that adoption provides a child with a critical parental relationship that (s)he otherwise lacks. The law fully recognizes and supports the adoptive bond, *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 843, 844 & n.51 (1977), which has existed for centuries—even before formal status was available.¹³ Today, all U.S. state courts issue adoption decrees, provided that “the necessary legal prerequisites are satisfied and that the proposed adoption is in the best interests of the particular child.”¹⁴ Those decrees provide the child with a legal relationship to his or her adoptive parent(s) (and vice versa), and consequently sever all legal and economic relationship the child had to his or her biological parents.¹⁵

That legal status recognizes the parental relationship enjoyed by those who “stay up nights with their children when they are sick, [and] who share the

¹³ Joan Heifetz Hollinger, *Adoption: Legal and Policy Perspectives*, in *The Child: An Encyclopedic Companion* 28, 28-29 (Richard A. Schweder, et al., eds., 2009).

¹⁴ *Id.*

¹⁵ La. Civ. Code Ann. art. 199 (2011); Jill Duerr Berrick, *Take Me Home: Protecting America’s Vulnerable Children and Families* 51 (2009); Joan Heifetz Hollinger, *Adoption Law and Practice* § 1.01[1] (2009) (after an adoption is complete, “[a]dopted children become, for all legal purposes, the children of their adoptive parents”).

triumphs and the tragedies and the thousands of uneventful days.”¹⁶ Children, in turn, develop significant “reciprocal, enduring, [and] emotional” relationships with their adoptive parents that are essential to a child’s development.¹⁷ These relationships help shape and develop a child’s sense of “self-awareness, social competence, conscience, emotional growth and emotion regulation, learning and cognitive growth, and a variety of other foundational developmental accomplishments.”¹⁸ They also provide the structure and monitoring that curbs violent or aggressive tendencies, stabilizing the child and protecting him from the development of serious behavior problems.¹⁹

Children require these “secure, stable, long-term continuous relationships” with their primary caregivers. *Lehman v. Lycoming Cnty. Children’s Servs. Agency*, 458 U.S. 502, 513 (1982). Indeed this Court has already recognized that “[t]here is little that can be as detrimental to a child’s sound development as

¹⁶ Maureen A. Sweeney, *Between Sorrow and Happy Endings: A New Paradigm for Adoption*, 2 Yale J.L. & Feminism 329, 362-63 (1990); see also American Academy of Pediatrics, Committee on Early Childhood, Adoption and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 Pediatrics 1145, 1146 (2000).

¹⁷ Beverly James, *Handbook for Treatment of Attachment-Trauma Problems in Children* 2 (1994); see also D. Brodzinsky, et al., *Children’s Adjustment to Adoption* 13 (1998) (These adoptive relationships form the “cornerstone for healthy psychological adjustment, affecting development not only in infancy and childhood but in adulthood as well.”).

¹⁸ Committee on Integrating the Science of Early Childhood Development, *From Neurons to Neighborhoods: The Science of Early Childhood Development* 265 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000).

¹⁹ *Id.*

uncertainty over whether he is to remain in his current ‘home,’ . . . especially when such uncertainty is prolonged.” *Id.* at 513-14. Adoption, more than foster care, provides a child with a secure environment because the stability and durability of adoption is “notably stronger than [] long term-foster care [and a]doption disruption rates are markedly lower[.]”²⁰

Adoption also provides children with legal, economic, and other societal benefits that long-term foster care or guardianships do not.²¹ Because adopted children—in contrast to foster children—are treated as the biological children of their adopted parents in all legal respects, they are entitled to support, inheritance, and coverage under private and public health insurance, Social Security, and other benefits programs. A substantial body of research confirms the importance of these entitlements to children otherwise left without permanent care or an abiding legal parent-child relationship.

On a variety of levels, “adopted children do as well as children living with their biogenetic parents.”²² This success is evident when children are adopted as

²⁰ Berrick, *supra* note 15, at 55.

²¹ *In re Adoption of John Doe and James Doe*, 2008 WL 5006172, at *15, *19 (Fla. Cir. Ct. Nov. 25, 2008).

²² Hollinger, *supra* note 13; David M. Brodzinsky & Marshall D. Schechter, *The Psychology of Adoption* 104 (1990) (“The results of our longitudinal studies indicate that the long-term prognosis for adopted children is in no way worse than for children in the general population, provided that the adoptive home is psychologically well prepared for the task of rearing a nonbiological child.”); Berrick, *supra* note 15, at 56 (“Studies indicate that children adopted from foster care—particularly children adopted while very young—bear great similarities to those for children from the general population.”).

infants, but it persists for children who are adopted at an older age.²³ In some circumstances, adopted children actually fare better than children who remain with their biological parents, particularly if those biological parents are “indifferent or abusive”²⁴ Adoptive parents, as well, are “generally satisfied with their adoption experience and would recommend adoption to others.”²⁵ Adoption disruption rates are also much lower than the “rates of re-entry for children returned to their birth parents, rates of guardianship disruption, or rates of placement change for children remaining in long-term foster care.”²⁶

B. The Problems With Foster Care.

Adoption protects children better than foster care does. Hundreds of thousands of children are in foster care each year in the U.S.²⁷ and it takes years to place each in permanent homes.²⁸ Children entering the foster care system have, generally speaking, already suffered through at least one separation from a primary caregiver. The very nature of foster care often creates many more separations from new and temporary caregivers. Such emotional and cognitive disruptions, particularly early on in the life of a child,

²³ Hollinger, *supra* note 13.

²⁴ *Id.*

²⁵ Berrick, *supra* note 15, 55.

²⁶ *Id.* (citing Committee on Integrating the Science of Early Childhood Development, *supra* note 21, at 265).

²⁷ Admin. of Children & Families, *supra* note 2.

²⁸ *Time for Reform: Aging Out and On Their Own*, The Pew Charitable Trusts, 2 (May 1, 2007), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/Kids_are_Waiting_TimeforReform0307.pdf.

have the “potential to impair brain development.”²⁹ Repeated moves from foster care home to foster care home “compound the adverse consequences that stress and inadequate parenting have on the child’s development and ability to cope.”³⁰ It is undisputed that any “unnecessary prolongation of the socially, legally, and psychologically insecure limbo-situation of foster care should be avoided, in the best interest of the child.”³¹

The staggering number of children in foster care and the potential for repeated separations from a child’s primary caregiver are actually not the greatest cause for concern. Far more troubling are the effects on children who “age out” of the foster care system. Those who reach the age of eighteen without ever having been adopted spend an average of five years waiting for placement, only to be denied that opportunity.³² For many of them, they will never have benefited from an adult “who is devoted to and loves the[m].”³³ That loss is substantial. The quality and stability of a child’s early human relationships “lay the foundation for a wide range of later developmental outcomes that really matter—self-confidence and sound mental health, motivation to learn, achievement in school and later in life, the ability to

²⁹ American Academy of Pediatrics, Committee on Early Childhood, Adoption and Dependent Care, *supra* note 16, at 1145.

³⁰ *Id.* at 1146.

³¹ Brodzinsky & Schechter, *supra* note 22, at 106.

³² *Time for Reform: Aging Out and On Their Own*, *supra* note 28.

³³ American Academy of Pediatrics, Committee on Early Childhood, Adoption and Dependent Care, *supra* note 16, at 1146.

control aggressive impulses and resolve conflicts in non-violent ways, knowing the difference between right and wrong, having the capacity to develop and sustain casual friendships and intimate relationships, and ultimately to be a successful parent oneself.”³⁴ Although young children may certainly establish healthy, loving relationships with a variety of adults, prolonged separation from a child’s primary caregiver(s), repeated detachments, and emotional disruptions can lead to serious physical, developmental, and mental health problems.³⁵

The consequences of “aging out” of the foster care system are grim. One in four children will be incarcerated within the first two years following emancipation.³⁶ Over one-fifth of the children will become homeless.³⁷ Approximately 58% will have a high school degree by age 19, compared to 87 percent of non-foster care youth.³⁸ And the number of children who never find an adoptive home has been increasing despite the fact that the overall number of children in foster care has been decreasing.³⁹ In 2005 alone,

³⁴ National Scientific Council on the Developing Child, *Young Children Develop in an Environment of Relationships* 1 (Center on the Developing Child at Harvard University, Working Paper No. 1, 2009), available at http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp1/.

³⁵ *Id.* at 3-4; American Academy of Pediatrics, Committee on Early Childhood, Adoption and Dependent Care, *supra* note 19, at 1145.

³⁶ *Time for Reform: Aging Out and On Their Own*, *supra* note 28, at 1.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

more than 24,000 youth aged out of the foster care system—a 41 percent increase since 1998.⁴⁰ Louisiana was one of the top 15 states with the largest percentage of youth who aged out of foster care without a permanent home.⁴¹ No one disputes that, if a child’s biological parents are unable or unwilling to raise that child, adoption is the best alternative.

Despite this data, each year the foster care system positions children to be aged out by assigning them the goals of “emancipation” or “long-term foster care”—in other words, child welfare officials have given up the pursuit of families for these children. In 2005, roughly 69,000 youth were redirected in this way.⁴² Foster care was created to be a “necessary and important safety net for abused and neglected children,” but it was never intended to be a long-term living arrangement. When a child “ages out” of the system, the system has failed by its inability to place that child.⁴³ The victims of this failure are, of course, the children. They are no more prepared to become “independent” adults than any other 18 year old. They have no one to turn to “for guidance on major decisions, for emotional support in times of stress or celebration, or for other needs such as health insurance, co-signing a loan for a car, or a myriad of other typical life tasks.”⁴⁴

⁴⁰ *Id.*

⁴¹ *See id.* at 16.

⁴² *Id.* at 3.

⁴³ *Id.*

⁴⁴ *Id.* at 3-4.

III. THERE IS NO RATIONAL BASIS FOR EXCLUDING UNMARRIED COUPLES FROM THE POOL OF PROSPECTIVE ADOPTIVE PARENTS.

There is no empirical support for the lower court's finding that for the State Registrar to recognize both married and single parent adoptions as opposed to adoptions by unmarried parents, because "marriage, when compared to cohabitation, 'is associated with better outcomes for children,' since marriage is more likely to provide the stability necessary for the healthy development of children." *Adar*, 169 F.3d at 162 (quoting Kristin Anderson Moore, *et al.*, *Marriage from A Child's Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, Child Trends Research Brief, at 2 (2002)). This conclusion utterly ignores the research that proves adoption by two parents is better than adoption by only one parent.

No one disputes that adoption is better for a child than placement in foster care. And the majority of courts agree that two-parent adoption affords a child many benefits that single parent adoption does not. *See, e.g., In re Adoption of M.A.*, 930 A.2d 1088, 1097 (Me. 2007) ("Most importantly, a joint adoption affords the adopted children the love, nurturing, and support of not one, but two parents.").⁴⁵ The social

⁴⁵ *See also, In re Adoption of Jason Michael Meaux*, 417 So. 2d 522, 523 (La. Ct. App. 1982) (Doucet, J., dissenting) ("Two parents are better than one."); *Pub. Health Trust v. Wons*, 541 So. 2d 96, 102 (Fla. 1989) (Overton, J., dissenting) (quoting the trial court: "I'll take judicial notice of the fact that for the most part the love and the parentage of two parents is far better than one. . . ."); *In re Termination of Parental Rights of Michael I.O.*, 551 N.W.2d 855, 858 (Wis. Ct. App. 1996) (quoting *In re Adoption of A.B.*,

research concurs, demonstrating that, generally speaking, “children do better when raised by two adults rather than one.”⁴⁶ Children’s rights and benefits are often tied to the legal status of the parents.⁴⁷ A two-parent adoption “enables the children to be eligible for a variety of public and private benefits, including Social Security, worker’s compensation, and intestate succession, as well as employment benefits such as health insurance and family leave, on account of not one, but two legally recognized parents.” *In re Adoption of M.A.*, 930 A.2d 1088, 1097 (Me. 2007). Having access to two sets of healthcare and benefits is invaluable, especially, for example, if one parent decides to remain at home and take on the role of the primary caretaker. A joint adoption also “assures that in the event of either adoptive parent’s death, the child’s continued rela-

444 N.W.2d 415, 419 (Wis. Ct. App. 1989) (“[I]t is generally better for children to have two parents.”); *In re W.*, 845 N.E.2d 229, 242 n.7 (Ind. Ct. App. 2006) (quoting *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270 (Ind. Ct. App. 2003) (recognizing that two parent adoption is better than one parent adoption and discussing the benefits of adoption).

⁴⁶ See, e.g., Mark Strasser, *Adoption, Best Interests, and the Arkansas Constitution*, 63 Ark. L. Rev. 3, 7 (2010); see also Timothy J. Biblarz & Judith Stacey, *How Does the Gender of Parents Matter?*, 72 J. Marriage & Fam. 3, 17 (2010) (“Compared to all other family forms, families headed by (at least) two committed, compatible parents are generally best for children.”); Richard E. Redding, *It’s Really About Sex: Same-Sex Marriage, Lesbian Parenting, and the Psychology of Disgust*, 15 Duke J. Gender L. & Pol’y 127, 166 (2008) (citing Paul R. Amato & Alan Booth, *A Generation at Risk: Growing Up in an Era of Family Upheaval* (1997)).

⁴⁷ *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, *supra* note 4 at 20.

tionship with the surviving adoptive parent is fixed and certain.” *Id.*

Research also confirms that adoption by two *unmarried* parents is better than adoption by one parent.⁴⁸ “A vast body of research indicates that, other things being equal . . . two compatible parents provide advantages for children over single parents.”⁴⁹ Children living with two parents are “at the very least, materially better off than children living with single mothers.”⁵⁰ The benefit of a two-parent household does not depend on the sexual orientation or gender of the parents.⁵¹

⁴⁸ Sandra L. Hofferth & Kermyt G. Anderson, *Are All Dads Equal? Biology Versus Marriage as a Basis for Paternal Investment*, 65 J. Marriage & Fam. 213, 213 (2003) (“Although cohabitating couples are not as prosperous as married couples, their children have been found to be better off than those of single parents.”); Biblarz & Stacey, *supra* note 46 (“A vast body of research indicates that, other things being equal (which they rarely are), two compatible parents provide advantages for children over single parents. This appears to be true irrespective of parental gender, marital status, sexual identity, or biogenetic status.”).

⁴⁹ Biblarz & Stacey, *supra* note 46.

⁵⁰ Gregory Acs & Sandi Nelson, *The Kids Are Alright? Children’s Well-Being and the Rise in Cohabitation*, Urb. Inst. 1 (July 31, 2002), <http://www.urban.org/publications/310544.html>.

⁵¹ *Position Statement on Adoption and Co-Parenting of Children by Same-Sex Couples*, Am. Psychiatric Ass’n, ¶ 1 (2002), <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200214.aspx> (“The research also shows that children who have two parents, regardless of the parents’ sexual orientations, do better than children with only one parent.”); Mary Becker, *Family Law in the Secular State and Restrictions on Same-Sex Marriage: Two are Better than One*, 2001 U. Ill. L. Rev. 1, 52 (2001) (“Although children are doubtless better off living in households with two parents,

IV. THE LOWER COURT'S DECISION IS INCONSISTENT WITH STATE GOALS AND NATIONAL ADOPTION POLICIES AND PROCEDURES.

The lower court also ignores the evidence that adoption by married *or* unmarried couples promotes state and national interests. For instance, Louisiana's goals with respect to adoption are "[t]o promote the permanent placement of available children into suitable homes. . . ." La. Child. Code Ann. art. 1167 (2011). In order to place children in permanent homes, Louisiana law, New York law, and national child welfare practice all recommend individualized assessments for each child to determine which adoptive home would be best for that child. La. Child. Code Ann. art. 1177; N.Y. Dom. Rel. Law § 115-d; Child Welfare League of Am., *CWLA Standards of Adoption Excellence* 4.7 (rev. ed. 2000). "Decisions about assessment, care, and planning should be made with sufficient information about the particular strengths and challenges of each child."⁵² The *CWLA Standards of Adoption Excellence* specifically recommend placement decisions that are based on a "careful review of the information collected in the child assessment and on a determination of which . . .

the empirical evidence does not suggest that one parent must be a man and the other a woman for children to flourish."); Biblarz & Stacey, *supra* note 46 (Two compatible parents are better for an adopted child than one, "irrespective of parental gender, marital status, sexual identity, or biogenetic status.").

⁵² American Academy of Pediatrics, Committee on Early Childhood, Adoption and Dependent Care, *supra* note 16, at 1145.

adoptive families could most likely meet the child's needs."⁵³

Louisiana's refusal to recognize the legitimacy of an entire category of prospective adoptive parents—namely unmarried couples—is therefore inconsistent with that widely held view and with its own law. It entirely forecloses the possibility that a child's placement with an unmarried couple is in fact in the best interest of the child. The state's refusal to individualize its review of adoption has widespread consequences. A diabetic child might be better placed in a home with an adoptive parent who is in the medical profession. A child with learning disabilities might be better placed in a home with a stay-at-home parent who is able to spend more time tutoring or working with the child. Some adoptive children might thrive on the attention they will receive as an only child in a single-parent home, whereas other children might succeed in a home with many siblings. The more options that are available to a caseworker at the time of adoption, the greater the likelihood the child will be placed in a home that meets his or her needs.

⁵³ Child Welfare League of Am., *CWLA Standards of Adoption Excellence* (rev. ed. 2000). Every other reputable child welfare group also recommends placement on a case-by-case basis. See, e.g., *Position Statement on Permanency Planning/Continuity of Relationships*, N. Am. Council on Adoptable Child. (Dec. 3, 2005), <http://www.nacac.org/policy/positions.html#Permanency> (NACAC recognizes that each child is an individual and therefore each situation requires careful evaluation, looking at the best interest of each child. . . . The family should be selected based on the child's needs and acknowledgement that age, race, and cultural considerations are necessarily important, as is appropriate input from the child.”).

In New York, for instance, adoption applicants submit to a rigorous and comprehensive process during which they submit information ranging from the physical and mental health of the adoptive parent(s) to the home the adoptive parent(s) plan to raise their family. N.Y. Dom. Rel. Law § 115-d(4-5) (McKinney 2011). They must pass a pre-placement investigation consisting of a personal interview and visit to the applicant's or applicants' home and an investigation of "any other facts relating to the familial, social, religious, emotional and financial circumstances of the adoptive parent or parents which may be relevant to certification as a qualified adoptive parent or parents." N.Y. Dom. Rel. Law § 115-d(4-5) (McKinney 2011). There can be little debate that New York's adoption process is any less rigorous—or reliable—than Louisiana's in serving the best interests of the child. *See, e.g.*, La. Child. Code Ann. art. 1177. "The very fact that the adoption[] ha[s] occurred is evidence that a court of law [] found the adoption to be in the best interests of the child[]" *Finstuen v. Edmondson*, 497 F. Supp. 2d 1295, 1309 (W.D. Okla. 2006). However, if the adoptive couple in question had resided in Louisiana, the child would remain parentless because joint adoption by an unmarried couple is not permitted in Louisiana. Louisiana's "attempt to strip [this] child of one of his [] parents seems far removed from the statute's purpose," from the New York law under which this adoption was authorized, and from the national standards for adoption proceedings and adoption best practices. *See id.*

CONCLUSION

This Court should grant the Petition for Certiorari,
and overturn *Adar*.

Respectfully submitted,

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APPENDIX

APPENDIX OF AMICI CURIAE

Center for Adoption Policy (CAP) is a New York based 501(c)3 organization. Its mission is to provide research, analysis, advice and education to practitioners and the public about current legislation and practices governing ethical domestic and inter-country adoption in the United States, Europe, Asia, Latin America and Africa. CAP is an independent entity. It is not affiliated with any agency or entity involved in the placement of children.

National Center for Adoption Law & Policy (NCALP) works to improve child welfare and adoption law, practices, and policies so that all children – especially those who have been abused or neglected or are dependent on the state for their care – can have healthy, safe, and stable homes. NCALP uses education, knowledge, leadership, and advocacy to further its mission, believing that children who live in safe and stable homes feel better about themselves, do better in school, receive better healthcare, and grow up to be better parents, workers, and citizens. NCALP’s research efforts are aimed at identifying the means through which child protection, foster care and adoption systems and processes can be improved. NCALP advocacy projects are aimed at bringing about these improvements through changes in the law and the way the law is implemented. Its education programs are designed to assist judges, lawyers, government managers, social workers, families and other process stakeholders to know about strategies for making child welfare and adoption laws work in ways that will provide children the stable families they deserve as quickly, efficiently and safely as possible.

Evan B. Donaldson Adoption Institute is a national not-for-profit organization devoted to improving adoption policy and practice. The Adoption Institute's mission is to provide leadership that improves adoption laws, policies and practices – through sound research, education and advocacy – in order to better the lives of everyone touched by adoption. The Institute conducts and synthesizes research; offers education to inform public opinion; promotes ethical practices and legal reforms; and works to translate policy into action.

National Association of Social Workers, National Association of Social Workers, New York State Chapter, and National Association of Social Workers, Louisiana Chapter. (NASW) is the largest membership organization of professional social workers in the world, with 145,000 members. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies. NASW also has adopted and promotes a *Code of Ethics*, which is intended to serve as a guide to the everyday professional conduct of social workers.

Center for Adoption Support & Education (C.A.S.E.) is a private, non-profit adoptive family support center. Its programs focus on helping children from a variety of foster care and adoptive backgrounds to receive understanding and support which will enable them to grow into successful, productive adults. C.A.S.E. provides post-adoption counseling and educational services to families, educators, child welfare staff, and mental health providers in Maryland, Northern Virginia, and Washington, D.C. In addition, C.A.S.E. is a national resource for families

and professionals through its training, publications, and consultations.

COLAGE: People with a Lesbian, Gay, Bisexual, Transgender, or Queer Parent is a national movement of children, youth, and adults with one or more lesbian, gay, bisexual, transgender and/or queer (LGBTQ) parent(s). The organization builds community, and works toward social justice through youth empowerment, leadership development, education, and advocacy.

Louisiana Progress Action Fund is a 501(c)(3) nonprofit organization. that informs, engages, and mobilizes community leaders, activists, advocates, and policymakers to lead Louisiana into the 21st century. Louisiana Progress promotes a Progress Agenda to reach citizens across the political spectrum to be advocates for effective solutions to the policy challenges that continue to shackle Louisiana to the past. The organization has assembled a network of community leaders, advocates, activists, and policymakers working together to solve the state's most difficult and pervasive problems and improve the quality of life for all people of the state.

Forum for Equality is a human's rights organization dedicated to the establishment of a society free from discrimination and to the support of good government. The Forum's advocacy and political activism is performed by three different organizations: Forum For Equality Louisiana, Forum For Equality Foundation and Political Action Committee. Forum For Equality Louisiana is devoted to political and civil activities. The Foundation does not engage in political activism nor does it engage in lobbying. It advocates for LGBT welfare mainly through education of the public and education of elected officials

about the importance of non-discriminative legislation and local non-discriminative executive orders and ordinances. The Political Action Committee is mainly concerned with the endorsement of candidates for public office. Forum For Equality Louisiana and Forum For Equality Foundation are independent affiliate organizations with separate federal employer identification numbers and separate purposes, governing documents, bank accounts, financial records and boards of directors. Both organizations share a joint website with each organization paying its appropriate share of the cost for maintaining this website under a “cost sharing agreement” approved by the governing boards.

Tulane School of Law - Juvenile Litigation Clinic provides student attorneys in the Juvenile Law Clinic at the Tulane School of Law the opportunity to litigate delinquency and dependency (or abuse and neglect cases) in the Orleans Parish, Louisiana Juvenile Court system. The student-attorneys argue all pre-trial motions, preliminary examinations, arraignments, competency hearings, and they handle the trials or adjudication hearings, and draft all writs or appeals in the Louisiana Fourth Circuit Court of Appeal, and the state Supreme Court. Student attorneys conduct all field investigations and witness interviews in addition to the preparation and handling of legal hearings for their clients.

Acadiana Legal Service Corporation is a private, non-profit law firm. It provides free legal assistance in civil cases to those who could not otherwise afford it. The Corporation is funded solely by grants and donations. This program is financially assisted by the Interest on Lawyers’ Trust Accounts Program of the Louisiana Bar Foundation. Acadania’s attor-

neys and paralegals provide advice and representation to low-income residents of numerous parishes within the State of Louisiana.

The People's Advocate of Southwest Louisiana is a collaborative foundation created to promote civil rights and social justice; to advocate for the rehabilitation and healing of children caught in the juvenile justice and child welfare systems; to end violence against women, children and animals; to fight for environmental justice and reduce exposure to toxic pollutants; to keep families together by helping to find legal and social solutions to immigration issues impeding family unity.

Consortium for Children (CFC) is a non-profit organization that was founded with the intent to support and collaborate with public child welfare agencies, families, the court system and other participants in the public child welfare system to provide better outcomes for children and youth in foster care. CFC's initial program, Permanency Planning Mediation (PPM) was and is a partnership with the State of California Department of Social Services, California Counties and the Courts. When successful, Permanency Planning Mediation can minimize losses for the child and shorten their time in foster care. PPM can also provide significant cost avoidance for county public welfare agencies and the courts. Consortium for Children's primary focus is to support and work with public and private agencies to implement innovative programs that improve the future of children currently in the child welfare system.

Child Welfare League of America (CWLA) is a coalition of hundreds of private and public agencies serving vulnerable children and families. The coali-

tion's expertise, leadership and innovation on policies, programs, and practices help improve the lives of millions of children in all 50 states. The Coalition's impact is felt worldwide. CWLA seeks to lead the nation in building public will to ensure safety, permanence, and well-being of children, youth, and their families by advancing public policy, defining and promoting practice excellence and delivering superior membership services. The Coalition's focus is children and youth who may have experienced abuse, neglect, family disruption, or a range of other factors that jeopardize their safety, permanence, or well-being. CWLA also focuses on the families, caregivers and the communities that care for and support these children.

North American Council on Adoptable Children (NACAC) provides advocacy, education, adoption, support, and leadership development in the U.S. and Canada. NACAC was founded by adoptive parents and is committed to meeting the needs of waiting children and the families who adopt them.

Family Equality Council works at all levels of government to advance full social and legal equality on behalf of the approximately one million lesbian, gay, bisexual, and transgender (LGBT) families raising two million children. Family Equality Council works to ensure equality for LGBT families by building community, changing hearts and minds, and advancing social justice for all families.