

DISTRICT COURT OF APPEAL  
THIRD DISTRICT OF FLORIDA

APPELLATE CASE NO. 3D08-3044

TRIAL COURT CASE NO. 06-033881 FC 04

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

APPELLANT

v.

IN RE MATTER OF ADOPTION OF X.X.G. & N..R.G.

APPELLEE.

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BRIEF OF AMICUS CURIAE LIBERTY COUNSEL IN SUPPORT OF  
APPELLANT FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

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## INTEREST OF AMICUS CURIAE

Liberty Counsel is a non-profit civil liberties education and legal defense organization devoted to preserving religious liberty, the sanctity of human life, and traditional families. The issues raised in the present action strike at the core of Liberty Counsel's mission. Liberty Counsel's Founder and Chairman, Mathew Staver, and President, Anita Staver, drafted the Florida Marriage Protection Amendment which was enacted by 62.5 percent of Florida's voters on November 4, 2008. Implicit in the passage of this amendment is the affirmation of the traditional family unit comprised of a mother and a father. This same core value is encompassed in Fla. Stat. §63.042(3).

Liberty Counsel represented 21 members of the Florida legislature as amici curiae in *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004), *rehearing en banc denied*, 377 F.3d 1275 (2004), *cert denied*, 543 U.S. 1081 (2005), in which the Eleventh Circuit established that §63.042(3) does not violate equal protection. In that brief, Liberty Counsel provided the Court with significant anecdotal and empirical evidence that demonstrated the eminently rational basis for the Legislature's decision to exclude practicing homosexuals from the list of those eligible to adopt children. That research, and the conclusion that the exclusion is rational, along with more recent findings, are critical to this Court's analysis of this most recent constitutional

challenge. Liberty Counsel respectfully submits that its presentation of this information will greatly assist the Court in its review of the Circuit Court's ruling.

On that basis, Liberty Counsel respectfully requests permission to appear as amicus curiae and present this brief to the Court. Liberty Counsel has sought consent from the parties, and has received consent from Appellant.

### **SUMMARY OF ARGUMENT**

The paramount concern of this Court, or any court determining whether certain parties should be permitted to adopt children, is whether the placement is in the best interest of the child. The Legislature has determined that certain placements, including with practicing homosexuals, are not in the best interest of the child. That determination should not be disturbed absent a finding that it lacks any rational basis. Florida Stat. §63.042(3), which prohibits permanent adoptive placement of children in homes where homosexuality is actively practiced, furthers the interest of the state to place children in homes where they will have, or where there is the potential they will have, both a mother and a father. Homosexual adoption by definition creates a motherless or fatherless household and will thus permanently deprive children from ever having both a mom and a dad. Despite this and other legitimate rational bases for the law, the Circuit Court erroneously concluded that §63.042(3) is unconstitutional.

## LEGAL ARGUMENT

### I. THE CIRCUIT COURT SHIRKED ITS *PARENS PATRIAE* DUTY WHEN IT DECLARED §63.042 UNCONSTITUTIONAL.

Determined to “make the law do what you want it do,”<sup>1</sup> the Circuit Court ignored Florida Supreme Court and Eleventh Circuit precedents when it concocted novel and wholly unsupported “fundamental rights” to support its conclusion that §63.042(3) should be unconstitutional.<sup>2</sup> More importantly, the Circuit Court wholly abandoned its obligation to protect the best interests of children being placed for adoption. Veiled in the guise of protecting newly minted children’s “liberty interests” and a “fundamental right to a permanent home,” the Circuit Court’s ruling actually deprives children of the *parens patriae* protection that is fundamental to their future.

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<sup>1</sup> Quote attributed to professor Bruce Rogow in describing the Florida Bar’s approval of the filing of an Amicus Curiae Brief by the Bar’s Family Law Section. “[I]n these kinds of cases, the law can be made to do what you want it to do,” he said. “This is more of a policy situation than a constitutional argument, but we always wrap policy around constitutional arguments.” *Taking a Stand*, THE DAILY BUSINESS REVIEW, February 3, 2009, <http://www.dailybusinessreview.com> (Last viewed February 4, 2009).

<sup>2</sup> The Circuit Court acknowledged that this was its goal. After discussing the history of the case and the court’s desire that the children permanently and legally share the bonds of parentage with the petitioner, the court said, “Nevertheless, based on the law of this state, only a finding that the statute is unconstitutional will permit this Court to grant the [adoption] petition.” *In re Adoption of John Doe and James Doe*, 2008 WL 5006172, \*21 (Fla. 11th Cir. Ct. 2008). The court then proceeded to find a “fundamental right to a permanent home” and that the right was violated by §63.042(3). *Id.*

“Since the State has an **urgent interest** in the welfare of the child, it shares the parent’s interest in an accurate and just decision.” *Santosky v. Kramer*, 455 U.S. 745, 766 (1982) (quoting *Lassiter v. Dept of Social Servs.*, 452 U.S. 18, 27(1981)) (emphasis added). This *parens patriae* interest means that the state must focus on promoting and preserving the welfare of the child when enacting or interpreting legislation. See *Santosky*, 455 U.S. at 766. In Florida adoption proceedings, “the court’s primary duty is to serve the best interests of the child – the object of the proceeding.” *In re Adoption of H.Y.T.* 458 So.2d 1127, 1128 (Fla. 1984). As the Fifth District explained:

In formulating its adoption policies and procedures, the State of Florida acts in the protective and provisional role of *in loco parentis* for those children who, because of various circumstances, have become wards of the state. Thus, adoption law is unlike criminal law, for example, where the paramount substantive concern is not intruding on individuals’ liberty interests, and the paramount procedural imperative is ensuring due process and fairness, Adoption is also distinct from such contexts as government-benefit eligibility schemes or access to a public forum, where equality of treatment is the primary concern. By contrast, in the adoption context, the state’s overriding interest is the best interests of the children whom it is seeking to place with adoptive families. Florida, acting *parens patriae* for the children who have lost their natural parents, bears the high duty of determining what adoptive home environments will best serve all aspects of the child’s growth and development.

*Buckner v. Family Services of Cent. Florida, Inc.* 876 So.2d 1285, 1288-1289 (Fla.5th DCA 2004)(internal citations omitted).Consequently, adoption is unlike other

proceedings in which the court is disinterested in the object of the litigation and seeks to resolve competing interests of the parties. *Adoption of H.Y.T.*, 458 So.2d at 1128.

The Circuit Court alluded to the state's *parens patriae* responsibility, but misconstrued it as an obligation to prevent infringement of what it saw as an adoptive child's fundamental right to be "free from unnecessary restraint." The Circuit Court reasoned that placing a child in foster care is a restraint on liberty and that the best interest of the child requires placement in an adoptive home "as rapidly as possible." *In re John Doe and James Doe* (hereinafter "*Doe*"), 2008 WL 5006172 at \*22. The Circuit Court jettisoned its "high duty of determining what adoptive home environments will best serve all aspects of the child's growth and development," *Buckner*, 876 So.2d at 1289, in favor of a creating quick exit out of foster care that also serves the interests of homosexuals seeking to overturn §63.042 (3). Just as the United States Supreme Court found a "right to privacy" in the "penumbra" of the Constitution, *Roe v. Wade*, 410 U.S. 113, 152-153 (1973), the Circuit Court found "a child's right to a true home, and in the case of a foster child, to a permanent adoptive home" in the "penumbra" of Florida's dependency and adoption laws. *Doe*, 2008 WL 5006172 at \*22. Under the Circuit Court's analysis, that right to a permanent home is a compelling state interest that is *ipso facto* in the best interest of the child and cannot be burdened with considerations of health, safety, stability or

compatibility with the child's developmental needs. However, as the Supreme Court made clear, the state's role as *parens patriae* means that issues of stability, safety and welfare, not merely permanency, must remain paramount when evaluating a prospective adoptive placement. *G.S. v. T.B.*, 985 So.2d 978, 984 (Fla. 2008).

The goal of the adoption statutes is not, as the Circuit Court claimed, merely "expeditious permanency," but permanent **and stable** homes for children whose natural parents can no longer care for them. *Id.* (emphasis added). When exercising its *parens patriae* obligation toward adoptive children, the state must consider the nature of the prospective home environment, not merely the duration of the stay. *Buckner*, 876 So.2d at 1289. "Indisputably, Florida's public policy manifests a strong intent to protect children from harm." *Applegate v. Cable Water Ski, L.C.* 974 So.2d 1112, 1114 (Fla.5th DCA 2008). That means that issues such as stability, safety, welfare and psychological well-being cannot be disregarded, and the Legislature's codification of those concerns in the adoption statutes cannot be tossed aside in the interest of political expediency. The Circuit Court did just that and abandoned its *parens patriae* obligation. That abrogation of its duties must be reversed.

## II. SECTION 63.042(3) IS A RATIONAL AND REASONABLE EXERCISE OF THE LEGISLATURE'S DUTY TO ACT IN THE BEST INTEREST OF CHILDREN BEING PLACED FOR ADOPTION.

In reaching its conclusion that §63.042(3) was unconstitutional, the Circuit Court disregarded the cardinal rule that “rational-basis review in equal protection analysis ‘is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.’” *Heller v. Doe*, 509 U.S. 312, 319 (1993) (citing *FCC v. Beach Communications*, 508 U.S. 307, 313 (1993)). “[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* at 320. “If there is ‘any reasonably conceivable state of facts that would provide a rational basis for the classification,’ the courts must defer to the Legislature.” *North Florida Women’s Health and Counseling Servs. v. State*, 866 So. 2d 612, 647 (Fla. 2003)(citing *Heller*, 509 U.S. at 320). “A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality.” *Heller*, 509 U.S. at 321. “It could be that “[t]he assumptions underlying these rationales [are] erroneous, but the very fact that they are ‘arguable’ is sufficient, on rational-basis review, to ‘immunize’ the [legislative] choice from constitutional challenge.” *Id.* at 333; *see also Lofton*, 377 F.3d at 1277 (Birch, J., concurring in denial of rehearing *en banc*)(using the above quote to uphold the panel’s decision and deny *en banc*

review). As the *Lofton* court said,

[T]he question of the effects of homosexual parenting on childhood development is one on which even experts of good faith reasonably disagree. Given this state of affairs, it is not irrational for the Florida legislature to credit one side of the debate over the other. Nor is it irrational for the legislature to proceed with deliberate caution before placing adoptive children in an alternative, but unproven, family structure that has not yet been conclusively demonstrated to be equivalent to the marital family structure that has established a proven track record spanning centuries.

*Lofton*, 358 F.3d at 826.

The Circuit Court correctly cited the appropriate deferential standard for rational basis review, but then proceeded to judge the wisdom, logic and fairness of § 63.042(3) based upon a one-sided application of only the evidence that was critical of the statute. Instead of acknowledging, as the Eleventh Circuit did in *Lofton*, that the fact that the question remains arguable is itself sufficient to satisfy rational basis, the Circuit Court subjectively evaluated the parties' evidence. The Circuit Court cavalierly dismissed the state's evidence of the potential detrimental effects of adoption by homosexuals and then concluded that there was no longer any rational basis to support §63.042(3). *Doe*, 2008 WL 5006172 at \*29. The Circuit Court dismissed Dr. George Rekers' expert testimony as not credible. *Id.* The court emphasized that Dr. Rekers, who has served for years as the head of psychiatry and psychology departments at various universities, is also a minister. *Id.* According to

the court, the fact that Dr. Rekers has degrees in theology as well as degrees and acclaim in psychology and psychiatry dooms his testimony as ideologically biased. *Id.* Notably, the court did not make a similar assessment of the petitioners' witness, Dr. Michael Lamb, who testified that he is a member of the ACLU, the organization representing the prospective adoptive parent. (Reporter's Transcript, "R.T.," p. 587, line 19). Dr. Lamb testified that his professional opinions have changed over time, which shows that the question of the effects of homosexual parenting on children is not as settled as the court concluded. (R.T. 631:16-22). Similarly, Dr. Susan Cochran testified that "bias is something that permeates the sciences." (R.T. 214:16). Either statement should have alerted the court of the continuing controversy that surrounds the question of homosexual parenting, which should have ended the court's rational basis analysis. Instead, the Circuit Court chose to disregard Dr. Rekers' testimony, which, unlike Dr. Lamb's has not changed over time, as ideologically biased and non-credible and accept only the testimony that agreed with its pre-ordained conclusion. Contrary to that conclusion, the effect of homosexual parenting on children remains as much a matter of disagreement among child development experts as it was when the Eleventh Circuit decided *Lofton*. Considering what is at stake for the children whose interests the court is supposed to be protecting, §63.042(3) is not merely rational, but necessary to properly carry out the state's *parens patriae* responsibility.

The Eleventh Circuit's finding regarding the rational relationship between §63.042(3) and the best interests of children remains as true today as it was in 2004.

Though a multitude of alternative child-rearing arrangements have been proposed, none has proven as enduring as the marital family structure, nor has the accumulated wisdom of several millennia of human experience discovered a superior model... [therefore,] it is rational for Florida to conclude that it is in the best interests of adoptive children, many of whom come from troubled and unstable backgrounds, to be placed in a home anchored by both a father and mother.

*Lofton*, 358 F.3d at 820. The Circuit Court's selective exclusion of expert testimony that supports the finding in *Lofton* does not change its continuing validity, which is supported by a myriad of studies that demonstrate that the exclusion in §63.042(3) is critical to the state's compelling interest in protecting the well-being of children.

The interest is particularly compelling for children being placed for adoption, who have already lost the relationship with their birth parents. and are therefore, as a group, more vulnerable to the physical and emotional effects of stress.<sup>3</sup> In its role as *parens patriae*, the state must be particularly mindful of this vulnerability when determining what adoptive homes are appropriate for children. The effects of potential types of families must be considered to determine the environment that is

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<sup>3</sup> Rekers, George A., *An Empirically-Supported Rational Basis for Prohibiting Adoption, Foster Parenting, and Contested Child Custody by Any Person Residing in a Household that Includes a Homosexually -Behaving Member*, 18 ST. THOMAS L. REV. 325, 387-388 (2005).

best for promoting the children’s well-being.<sup>4</sup>

The prospective adoptive parent in this case and others who oppose § 63.042(3) argue that an adult’s sexual orientation has no bearing on whether they can carry out certain important parenting functions. In its support of this argument, the Circuit Court detailed the various parenting functions performed by the prospective adoptive parent, including feeding and clothing the children, overseeing their homework and taking them to tennis lessons. *Doe*, 2008 WL 5006172 at \*3. As necessary as these functions are, they are not sufficient to provide a family environment that is in the best interest of the child, which is the state’s paramount consideration.<sup>5</sup> Various individuals and couples are excluded from adoption regardless of whether they can provide basic care to the children because they are inherently incapable of providing homes in the best interests of children.<sup>6</sup> For example, very young married couples are often disqualified because they do not have a sufficient history of an established, stable family structure.<sup>7</sup> “It is not a question of whether a married young man and woman age 18 have the skills to perform a list of certain vital parenting functions,” such as tying shoes, providing proper supervision or cooking nutritious meals, but of

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<sup>4</sup> *Id.* at 389.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

providing the most stable home environment.<sup>8</sup> Similarly, a particular couple in their 90s might be able to perform the necessary parenting functions and have child-rearing experience, but it is in the best interest of children to exclude elderly couples from adopting because the group of elderly individuals generally will not be able to parent over a sufficiently long enough period of time.<sup>9</sup> Likewise, the state might disqualify a couple who are blind and deaf, despite evidence that they are capable of providing parenting equal to those with sight and hearing because the disadvantages, stress and potential inadvertent harm present in such households would not be in the best interest of children.<sup>10</sup> In any of the above scenarios “individual ‘screening’ for the adequacy of their parenting skills and functioning is insufficient and inappropriate for this reason – each of these family structures (for different practical reasons) is inherently incapable of providing homes in the best interests of children needing placement.”<sup>11</sup> That conclusion is not a result of invidious discrimination, but a reflection of the fact that “[i]t is in the best interests of adopted or foster children to be placed in families where the parents not only are able to competently carry out important parenting functions, but also provide the best family structure providing the

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 389-390.

<sup>10</sup> *Id.* at 390.

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

environment that provides the greatest contributions to child development, adjustment and eventual adult adjustment.”<sup>12</sup> Since children being placed for adoption have already suffered separation from their biological parents, it is particularly important that they be placed in an environment that is the most likely to provide stability, continuity and peace of mind.

A “conjugal family” represents that environment – “a household structure and process that is most likely to allow an adoptive child to thrive.”<sup>13</sup> The conjugal family has been “the preferred site for the placement of children in adoptive homes, because this family form, although imperfect in particular instances has been the most successful both historically and currently.”<sup>14</sup>

Historically, and currently, the conjugal family has been, and is, the site for procreation and for childrearing; in contrast, historically and currently, same-sex couples have not been and are not, usually associated with procreation or with childrearing. In fact, same-sex couples have been and are associated with practices that impair personal and parental effectiveness, such as high-risk sexual activities, including multiple sex partners, higher rates of emotional problems and substance abuse. . . . The conjugal marital family, in contrast, has been associated with single-partner sexual activity, legal and social responsibility for children who issued from the union, and reduced risk of substance abuse, together with higher levels of physical health, emotional and

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<sup>12</sup> *Id.*

<sup>13</sup> Camille S. Williams, “*Family Norms in Adoption Law: Safeguarding the Best Interests of the Adopted Child*,” 18 ST. THOMAS L.REV. 681, 682 (2006).

<sup>14</sup> *Id.* at 681.

familial stability and higher income levels. For these reasons, the conjugal family – not the same-sex couple – has been the norm for adoptive placements.<sup>15</sup>

According to the 2000 census, 99 percent, a significant numerical norm, of the coupled households in the United States consist of heterosexual couples.<sup>16</sup> In addition, documented differences between children raised by same-sex parents and those raised by opposite-sex parents point to the fact that the sex of the parent or the child or both makes a difference in a child's development.<sup>17</sup> For example, researchers Judith Stacey and Timothy Biblarz found:

A significantly greater proportion of young adult children raised by lesbian than heterosexual mothers in the Tasker and Golombok sample reported having had a homoerotic relationship (6 of the 25 young adults raised by lesbian mothers—24% compared with 0 of the 20 raised by heterosexual mothers). . . .

Relative to their counterparts with heterosexual parents, the adolescent and young adult girls raised by lesbian mothers appear to have been more sexually adventurous and less chaste. . . .

[P]arental sexual orientation is positively associated with the possibility that children will attain a similar orientation, and theory and common sense also support such a view. Children raised by lesbian co-parents should and do seem

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<sup>15</sup> *Id.* at 682-683.

<sup>16</sup> *Id.* at 685 (citing U.S. Census Bureau, Married-Couple and Unmarried-Partner Households: 2000, <http://www.census.gov/prod/2003pubs/censer-5.pdf>).

<sup>17</sup> *Id.* at 686 (citing Judith Stacey & Timothy J. Biblarz, *Does the Sexual Orientation of Parents Matter?* 66 AM. SOC. REV. 159, 176 (2001)).

to grow up more open to homoerotic relationships.<sup>18</sup>

Other research points to potential problematic outcomes for such children and others who might identify themselves as homosexual.<sup>19</sup> For instance, one study indicated that “[s]ame-gender sexual orientation is significantly associated with each of the suicidality measures” gauged in the study.<sup>20</sup> Specifically, “gay, lesbian, and bisexual young people are at increased risk of mental health problems, with these associations being particularly evident for measures of suicidal behavior and multiple disorder[s].”<sup>21</sup> Given these “significant differences in the structure and processes of married heterosexual couple households compared to unmarried opposite-sex couples, same-sex couples, polygamous and polyamorous households, to have a married couple or unmarried individual norm as a threshold for adoption is not invidious discrimination, but a rational means of legislating requirements most likely to yield the legitimate state goal of providing a stable home for adoptive children.”<sup>22</sup>

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<sup>18</sup> Stacey and Biblarz at 179.

<sup>19</sup> Richard Herrell, et al., *Sexual Orientation and Suicidality: A Co-twin Control Study in Adult Men*, 56 ARCHIVES OF GENERAL PSYCHIATRY 867 (Oct. 1999).

<sup>20</sup> David M. Fergusson, John L. Horwood, & Annette L. Beautrais, *Is Sexual Orientation Related to Mental Health Problems and Suicidality in Young People?*, 56 ARCHIVES OF GENERAL PSYCHIATRY 876 (Oct. 1999).

<sup>21</sup> *Id.*

<sup>22</sup> Williams at 683-684.

While the Circuit Court and supporters of homosexual adoption might believe that the standard family norm is “too restrictive, discriminatory,” or even against the best interest of children who might otherwise be in foster care, the fact is that “keeping the conjugal family norm is a rational means to the legitimate state goal of seeking safe placement for adoptive children.”<sup>23</sup>

Similarly, it is not discriminatory or a sign of animus for the legislature to acknowledge the inherent binary nature of human sexuality and to seek to ensure that adoptive children are placed in environments where gender boundaries will be experienced and enforced. “We live in a world demarcated by two genders, male and female. There is no third or intermediate category. Sex is binary.”<sup>24</sup> Maintaining and modeling gender boundaries is important for the development of children.<sup>25</sup> Having both a mother and a father in the home provides children with four models of these boundaries: (1) A role model of a stable heterosexual marriage relationship, (2) A role model of a mother and father coordinating co-parenting, (3) A parenting role model of a father-child relationship and (4) A parenting role model of a mother-child

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<sup>23</sup> *Id.* at 683.

<sup>24</sup> Mathew D. Staver, *SAME-SEX MARRIAGE PUTTING EVERY HOUSEHOLD AT RISK*, 25 (Broadman & Holman, 2004).

<sup>25</sup> *Id.* at 36-37.

relationship.<sup>26</sup> A same-sex household deprives children of three of those four models and therefore, by definition, places children at a disadvantage.<sup>27</sup> It is rational for the legislature, acting as *parens patriae*, to not place children who have already suffered loss of family relationships into an inherently disadvantageous circumstance.

It is also rational for the state to decide that it is not in the best interest of children to place them into an environment in which they are more likely to experience “the stress and associated harm of an ill-timed sex education that is not timed to match the psychosexual developmental needs of the child,” of encountering or being exposed to homosexual paraphernalia, pornography and political activity, or of being exposed to a household that does not restrict sexual relationships to marriage.<sup>28</sup> The recent arrest of a Miami Shores resident offers a concrete example. Dylan Ward was arrested in Miami-Dade County on October 30, 2008 in connection with an August 2006 murder that occurred in a D.C. home shared by Mr. Ward, Victor Zaborsky and attorney Joseph Price.<sup>29</sup> Mr. Price and Mr. Zaborsky were also

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<sup>26</sup> Rekers, *Empirically Supported Rationale*, at 392.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 377, 386.

<sup>29</sup> *Dylan Ward Ordered Held in Federal Custody*, Legal Times, <http://www.typepad.com/t/trackback/895477/35191585>.

arrested in connection with the murder.<sup>30</sup> Mr. Zaborsky and Mr. Price, who are each the biological father of children born to a lesbian acquaintance, were featured in a 2004 USA Today article about homosexual parents.<sup>31</sup> The article described Zaborsky and Price as “actively involved parents” who helped create “an extended ‘core family’” for the children.<sup>32</sup> The affidavit supporting Mr. Ward’s arrest warrant graphically describes the lifestyle lived by these “actively involved parents,” and Mr. Ward, including drugs and homosexual paraphernalia found in their residence.<sup>33</sup> Even if this situation is atypical, a legislature’s choice to protect children from the potential of being adopted into such a situation by prohibiting homosexuals from adoption is not only rational, but compelling in light of the state’s *parens patriae* obligation.

The state’s *parens patriae* responsibility does not mean merely finding permanent homes for as many children as possible, but exercising diligence and

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<sup>30</sup> Scott Michels, *Police Allege Coverup in Lawyer’s 2006 Murder*, ABC News, <http://abcnews.go.com/TheLaw/story?id=6306456&page=1>.

<sup>31</sup> Karen S. Peterson, *Looking straight at gay parents*, USA Today March 8, 2004, [http://www.usatoday.com/life/lifestyle/2004-03-08-gay-parents\\_x.htm](http://www.usatoday.com/life/lifestyle/2004-03-08-gay-parents_x.htm).

<sup>32</sup> *Id.*

<sup>33</sup> Arrest warrant issued by the Superior Court for the District of Columbia, dated October 27, 2008, at 10-11. [http://legaltimes.typepad.com/blt/files/ward\\_affidavit](http://legaltimes.typepad.com/blt/files/ward_affidavit) (Last visited February 12, 2009).

discernment so that children are placed in safe environments that minimize the risk of harm.<sup>34</sup> “The state and its agents have a heavy *parens patriae* duty to act in the best interests of children and to protect them from danger, when they come under their supervisory powers in adoption cases.”<sup>35</sup> “[V]alid concerns about sexual practices, relationships, social patterns and individual characteristics that pose potential risk of harm to children cannot ethically (or legally) be ignored even if they make us uncomfortable.”<sup>36</sup> Consequently, it is rational for the legislature to conclude that, in light of the vulnerability of children needing placement and the continuing disagreement among child development experts about the effects of homosexual parenting on children it is in the best interest of the children to exclude homosexuals from adoption. As William L. Pierce, the founder and longtime president of the National Council For Adoption said:

The best place for a child in need of placement, all things being equal, is a private family with parents whose health and lifestyles are such that they are likely to provide the child appropriate care and modeling at least until the child is 18. . . . The data suggest that a family headed by one male and one female who are married to each other have beneficial outcomes for children they adopt, taking into account proper screening,

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<sup>34</sup> Lynn D. Wardle, *Adult Sexuality, the Best Interests of Children, and Placement Liability of Foster-Care and Adoption Agencies*, 6 JOURNAL OF LAW AND FAMILY STUDIES 59, 95 (2004)

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

<sup>36</sup> *Id.* at 97.

preparation, and support for the family. . . . Other family constellations, including un-married, long-term cohabiting heterosexuals, or single-parent heterosexual households, are less optimal for children. The data . . . do not tell us anything about same-sex parenting. There is a basic rule of prudence that should apply as a result: When in doubt, don't.<sup>37</sup>

## CONCLUSION

For the foregoing reasons, Amicus Curiae Liberty Counsel urges this Court to reverse the Circuit Court's finding that §63.042(3) is unconstitutional.

Dated March 4, 2009

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<sup>37</sup> *Id.* at 99 (citing William L. Pierce, *Adoption Principles*, NATIONAL REVIEW ONLINE, <http://www.nationalreview.com/comment/comment-pierce051002.asp>).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this 4th day of March, 2009, to:

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## **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this brief complies with the font and type size requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point type.

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