IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-261

D.M.T.,

Appellant,

v.

T.M.H.,

Appellee.

ORIGINAL

On Appeal from the District Court of Appeal of Florida, Fifth District

BRIEF OF *AMICI CURIAE* UNIVERSITY OF FLORIDA FREDRIC G. LEVIN COLLEGE OF LAW CENTER ON CHILDREN AND FAMILIES, UNIVERSITY OF MIAMI SCHOOL OF LAW CHILDREN AND YOUTH LAW CLINIC, NOVA SOUTHEASTERN UNIVERSITY LAW CENTER CHILDREN AND FAMILIES CLINIC, AND BARRY UNIVERSITY SCHOOL OF LAW CHILDREN AND FAMILIES CLINIC, *IN SUPPORT OF APPELLEE T.M.H.*

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici[1] are Florida law school clinics and centers expert in and devoted to representing the legal rights and best interests of children, who submit this brief in support of Appellee TMH based on the rights and interests of the parties' child.

SUMMARY OF ARGUMENT

Under Florida law children are entitled to the care, companionship and support of both parents when the parents' relationship dissolves. Social science research confirms the vital importance of this contact, for children of same-sex couples just as for children of opposite-sex couples. Applying Florida's assisted reproduction statutes to deprive K of a legal relationship with TMH therefore violates K's right to the equal protection of the laws: a State may not deny a class of children substantial benefits accorded to children generally simply because the State disapproves of the parents' relationship.

Moreover, as a biological parent who actually parented her child from birth for nearly four years, TMH has a constitutionally protected interest in her relationship with K. K's interest in maintaining that relationship also warrants constitutional protection in light of the paramount importance such relationships have in the lives of children. The judgment below should be affirmed.

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[1] The University of Florida Fredric G. Levin College of Law Center on Children and Families, the University of Miami School of Law Children and Youth Law Clinic, the Nova Southeastern University Law Center Children and Families Law Clinic, and the Barry University School of Law Children and Families Clinic.

ARGUMENT

KT-H (hereafter "K"), the child whose welfare by statute and under the common law must be the Court's "primary consideration" in this matter, is now eight years old. Conceived with the use of assisted reproductive technology from the egg of TMH and an anonymous sperm donor, K was born in Brevard County, Florida to DMT, a woman in a same-sex committed relationship with TMH. DMT and TMH jointly planned to bring K into the world and to raise her in their home as their child, and they did so for two and a half years, sharing day-to-day child-rearing responsibilities. DMT and TMH then separated, but continued to share parenting responsibilities until K was nearly four years old; K lived part of the time with DMT and part of the time with TMH. At that point DMT moved with K to an undisclosed location and deprived TMH of all further contact with K. TMH brought this action to establish her parentage and restore her access to her child.

I. Depriving K of a Legal Relationship with TMH Violates K's Right to the Equal Protection of the Laws.

DMT argues that she is K's sole legal parent because TMH and DMT do not qualify as a "commissioning couple" under Florida's assisted reproduction statutes, and TMH therefore "relinquish[ed] all maternal ... rights and obligations with respect to ... resulting children" as the "donor of an[] egg" under Section 742.14, Florida Statutes. That argument must be rejected. Applying the statutes to deprive K of a legal relationship with TMH violates K's right to the equal protection of the

laws.

Under Florida law, the general rule is that children have and are entitled to the support of two parents. Outside the context of assisted reproductive technology, if the mother is married when the child is born, her husband is presumed to be the child's father, and the presumption may only be rebutted where the child's best interests would be served. *Fla. Dep't of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006); *Dep't of Health & Rehabilitative Servs. v. Privette*, 617 So. 2d 305, 309 (Fla.1993). If the mother is not married, she or the father or the child may bring an action to establish paternity under § 742.011, Florida Statutes; paternity also may be established by adjudication, affidavit or acknowledgment in a variety of contexts, *see* § 742.10(1), Florida Statutes.

For children conceived with the use of assisted reproductive technology, Florida law generally provides that both of the intended parents are the child's parents. *See* §742.13(2), Fla. Stat. (defining "'commissioning couple'" as "the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents"); § 742.16, Fla. Stat. (providing procedure for commissioning couple to affirm their status as the legal parents of the child); *see also* § 742.11, Fla. Stat. (confirming parental status of married couple to child born within wedlock when both husband and wife have consented in writing to use of assisted reproductive

technology, regardless of genetic connection to child).

In all of these contexts, the child is entitled to the support of both parents, even when the parents' relationship dissolves. *See* § 61.29, Fla. Stat. (establishing public policy of this State that "[e]ach parent has a fundamental obligation to support his or her minor or legally dependent child"); § 61.13(1), Fla. Stat. (authorizing court to order either or both parents to pay child support in dissolution of marriage proceeding); § 742.031, Fla. Stat. (directing court to order either or both parents to pay child support in paternity proceeding); § 61.30, Fla. Stat. (establishing presumptive amount of child support to be ordered in proceedings for such support under any chapter).

More importantly, the child is presumptively entitled to the on-going care and companionship of both parents when the parents' relationship dissolves. Section 61.001, Florida Statutes, declares the Legislature's purpose "to safeguard meaningful family relationships" and "[t]o mitigate the potential harm to ... children caused by the process of legal dissolution of marriage." Section 61.13(2)(c) expressly declares the State's public policy to be "that each minor child [have] frequent and continuing contact with both parents after the parents separate" and further requires the court to order "that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child." Section 61.13(3) confirms that in

establishing its orders concerning parental responsibility, the court's "primary consideration" must be "the best interest of the child," and in subsections (d) and (o) the statute further directs the court to consider, *inter alia*, "the desirability of maintaining continuity" and "[t]he particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation ...." While chapter 61 applies by its terms to contexts where the parents are married, chapter 742 extends these principles to contexts where the parents are not married, expressly authorizing the court in a paternity proceeding to "make a determination of an appropriate parenting plan, including a time-sharing schedule, in accordance with chapter 61." §742.031, Fla. Stat.

Social science research confirms the vital importance to a child of this presumptive right to maintain existing relationships with both parents when the parents' relationship dissolves. "Paramount in the lives of ... children is their need for continuity with their primary attachment figures ... ." Am. Acad. of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 Pediatrics 1145, 1146 (2000) (hereafter *Young Children in Foster Care*); *see also* Nat'l Scientific Council on the Developing Child, *Young Children Develop in an Environment of Relationships* 4 (2004) (hereafter *Environment of Relationships*) (children need "sustained, reliable

relationships within the family"); Nat'l Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development* 265 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000) (hereafter *Neurons to Neighborhoods*); J. Bowlby, *Attachment and Loss: Retrospect and Prospect*, 52 Am. J. Orthopsychiatry 664, 666 (1982).[2]

Studies of children of divorced parents confirm the psychological harm that can result when a child is separated from a parent to whom he or she is attached. *See, e.g.,* Judith S. Wallerstein & Sandra Blakeslee, *Second Chances: Men, Women and Children a Decade After Divorce* (1989) (concluding that children who do not maintain contact with parents suffer a continuing sense of loss and sadness); E. Mavis Hetherington et al., *What Matters? What Does Not? Five Perspectives on the Association Between Marital Transitions and Children's Adjustment*, 53 Am. Psychol. 167, 177 (1998) (same).

Accordingly, when their parents' relationship dissolves, children generally benefit from continued contact with both parents. "[C]hildren who are deprived of meaningful relationships with one of their parents are at

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[2] *See generally* Joseph S. Jackson & Lauren G. Fasig, *The Parentless Child's Right to a Permanent Family*, 46 Wake Forest L. Rev. 1, 15-29 (2011) (discussing social science research on the development and importance of, and need for continuity in, a child's attachment bonds with her parental caregivers); Br. of *Amici Curiae* National Association of Social Workers et al. (same).

greater risk psychosocially, even when they are able to maintain relationships with their other parents." Michael Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 Vir. J. of Social Policy & the Law 98, 111-12 (2002); *see also* Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?*, 54 J. Marriage & Fam. 837, 838 (1992) ("Children who maintain contact with both parents tend to be better adjusted").

The findings are no different for children of same-sex parenting relationships: when a lesbian couple that has jointly raised a child since birth separate, "it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child's relationship with *both* parents." Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Develop. 1025, 1037 (1992) (emphasis added). This result is not surprising, since parent-child attachment bonds form in same-sex parent families exactly as they do in opposite-sex parent families, regardless of legal or biological connections. *See* Am. Acad. of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 341 (2002) (finding that "[c]hildren's optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes"); Raymond D. Chan et al., *Psychosocial Adjustment*

Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers, 69 Child Dev. 443 (April 1998) ("Our results are consistent with the general hypothesis that children's well-being is more a function of parenting and relationship processes with the family...[than] household composition or demographic factors."); Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20:3 Child & Adolescent Soc. Work J. 159, 161, 167-68 (2003) (reporting findings in study of adopting lesbian couples, where legal relationship was established by only one partner, that "quality of care was the salient factor in the establishment of an attachment hierarchy" and that "parental legal status" was *not* a "decisive variable[] in the development of a primary attachment bond"); B. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics,* in *Gay and Lesbian Parents* 23-38 (Frederick W. Bozett ed., 1987) (reporting findings based on clinical evaluation of preschool children of lesbian couples, that when both women in the relationship care for a child, the child becomes attached to both); S. Golombok et al., *The European Study of Assisted Reproduction Families: Family Functioning and Child Development*, 11:10 Human Reproduction 2324, 2330 (1996) (finding that the lack of a genetic link between one or both same-sex parents and the child did not have negative consequences for parent-child relationships); A. Brewaeys, et al., *Donor Insemination: Child Development and Family Functioning in Lesbian*

Mother Families, 12:6 Human Reproduction 1349, 1356 (1997) (reporting findings in study of child development in lesbian families that "among lesbian mothers, the quality of the parent-child interaction [does] not differ significantly between the biological and the [non-biological] mother"; "a strong mutual attachment [develops] between the [non-biological] mother and the child"; and "the [non-biological] mother in the lesbian families [is] regarded by the child as just as much a 'parent' as the father in heterosexual families.").

Indeed, more generally, social science research has now established that parents' sexual orientation "'has no measureable effect on the quality of parent-child relationships,'" that "lesbian and gay parents are every bit as fit and capable as heterosexual parents," and that "their children are as psychologically healthy and well-adjusted as children reared by heterosexual parents." Br. of Am. Psychological Ass'n. as *Amicus Curiae* Supporting Appellee, *Fla. Dep't. of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79 (Fla. 3d DCA 2010) at 14, 16 (footnote omitted), *available at* http://www.apa.org/about/offices/ogc/amicus/xxg-nrg.pdf (collecting studies regarding the suitability of gay and straight people as parents); *see also* Rachel H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 Applied Developmental Sci. 164, 175 (2010); Nanette Gartrell & Henny Bos, *U.S.*

National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents, 126 Pediatrics 28, 34 (2010); Am. Psychiatric Ass'n, *Adoption and Co-Parenting of Children by Same-Sex Couples: Position Statement* (2002) ("Numerous studies over the last three decades consistently demonstrate that children raised by gay or lesbian parents exhibit the same level of emotional, cognitive, social, and sexual functioning as children raised by heterosexual parents.").

In short, K is similarly situated to other children; the fact that her parents are two women rather than an opposite-sex couple does nothing to change her attachments to them, her need for continuity in her relationships with them, or the profound harm that would be caused by denying her the care, companionship and support of one of them: a parent who lived with, loved and nurtured her through the first four years of her life.

It follows that applying the assisted reproduction statutes to deprive K of a legal relationship with TMH implicates K's right to the equal protection of the laws, requiring scrutiny of the legislative purpose or justification for excluding same-sex couples from the definition of "commissioning couple" in Section 742.13(2), Florida Statutes.

Perhaps the Legislature believed that children of same-sex couples lack the same sort of attachments to their parents that children of opposite-sex couples

form, or that their need for "frequent and continuing contact with both parents after the parents separate," *see* § 61.13(2)(c), Florida Statutes, is somehow different from the need of all other children for such contact. If so, the exclusion of same-sex couples from the definition of "commissioning couple" does not pass muster. The Florida Constitution's equal protection guarantee requires that classifications be "based on a *real difference* which is reasonably related to the subject and purpose of the regulation," *State v. Leicht*, 402 So. 2d 1153, 1155 (Fla.1981) (emphasis added), and as explained above, children of same-sex couples have the same needs and interests as children of opposite-sex couples in this regard.

Alternatively, the Legislature may have believed that same-sex couples should not parent children because homosexuality is morally wrong. But that justification also fails. Earlier generations sought to express exactly the same sort of moral disapproval of unmarried couples by enacting legislation depriving their children of substantial rights. In case after case, this Court and the Supreme Court struck down such laws on the basis that they violate the right of the children to equal protection. *See, e.g.*, *In re Burris Estate*, 361 So. 2d 152, 155 (Fla. 1978) (striking down limitation on intestate succession by illegitimate child and noting the "fundamental unfairness" of statutes that disadvantage such children in order to reflect "traditional moral and social values disapproving extra marital sexual relations"); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)

("The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust.").

Gomez v. Perez, 409 U.S. 535 (1973), is directly analogous. In *Gomez*, an unwed mother sued a father for child support, but was denied relief because the Texas statutory scheme (and the common law of Texas) imposed no duty on the father to support his illegitimate children. *Id.* at 536-37. In light of the fact that Texas law gave legitimate children the right to such support, the Court held that denying illegitimate children that right violated the Equal Protection Clause, stating: "a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally." *Id.* at 538.

Here, applying the assisted reproduction statutes to deprive K of a legal relationship with TMH denies her "substantial benefits accorded children generally": not only the same right to support that was at issue in *Gomez*, but also the presumptive right to "frequent and continuing contact with both parents after the parents separate" that Florida grants to all other children as the explicitly expressed "public policy of this state." § 61.13(2)(c), Fla. Stat. "[T]here is no constitutionally sufficient justification for denying such an essential right to a child" simply because the State disapproves of the parents' relationship. *Gomez*, 409 U.S. at 538.

II. The Child's Interest in an Established Parent-Child Attachment Relationship Is Constitutionally Protected.

A. The federal and state constitutions protect a biological parent's interest in an established parent-child attachment relationship.

Both the federal and state constitutions articulate robust privacy and liberty rights that protect the relationships of parents and their children. "[T]he protection of liberty under the Due Process Clause has a substantive dimension of fundamental significance in defining the rights of the person." *Lawrence v. Texas*, 539 U.S. 558, 565 (2003). The Florida Constitution also protects "the right to liberty and self-determination." *State v. J.P.*, 907 So. 2d 1101, 1115 (Fla. 2004). Its explicit right of privacy –Article I, section 23 – provides even "more protection than the federal right." *Id.*

The substantive protection of liberty under these constitutional provisions extends to "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Lawrence*, 539 U.S. at 574. Specifically, it extends to the fundamental right to "establish a home and bring up children," which has long been deemed "essential to the orderly pursuit of happiness." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also Grissom v. Dade County*, 293 So. 2d 59, 62 (Fla. 1974) (the right to establish a family though procreation or adoption "is so basic as to be inseparable from 'the right[] ... to pursue happiness'" protected by Article I, Section 2 of the Florida Constitution);

Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) ("If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.").

The Constitution demands "respect ... for the autonomy of the person in making these choices": they "'involv[e] the most intimate and personal choices a person may make in a lifetime'" and are "'central to personal dignity and autonomy.'" *Lawrence*, 539 U.S. at 574 (quoting *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833(1992)). "Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do." *Id.*

When two people in a committed relationship exercise their autonomy to bring a child into the world and jointly share child-rearing responsibilities for several years, they each have a constitutionally protected fundamental liberty interest in the care, custody and management of their child. *Lehr v. Robertson*, 463 U.S. 248, 261 (1983); *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d 565, 570 (Fla. 1991). "[T]his fundamental parental right" includes the parent's "'legal right to enjoy the custody, fellowship and companionship of his offspring.'" *Padgett*, 577 So. 2d at 570 (citation omitted).

To be sure, this right is not absolute, and may be terminated upon proof by

clear and convincing evidence of the parent's abuse, neglect or abandonment. *Id.* at 570-71; *Santosky v. Kramer*, 455 U.S. 745, 758-70 (1982). But absent such proof, the State may not deprive such a parent of his fundamental right to the custody, fellowship and companionship of his offspring by deeming him a legal stranger to the child. *Stanley v. Illinois*, 405 U.S. 645 (1972). In *Stanley*, an unwed father who had established an actual parenting relationship with his children was deprived of custody when the mother died, because the Illinois parentage statute excluded unwed fathers from the definition of "parents." *Id.* at 650. The Court held that the father's interest "in the companionship, care, custody and management" of "the children he has sired and raised" was constitutionally protected, and could not be negated by Illinois' statutory exclusion of him from the definition of parent. *Id.* at 651-52. Rather, as a biological parent who had an actual parenting relationship with the children, the father was constitutionally entitled to a hearing on his fitness before the children were removed from his custody, notwithstanding the fact that he was not deemed a "parent" under Illinois law. *Id.* at 658. The Constitution "'limits the authority of a State to draw such 'legal' lines as it chooses.'" *Id.* at 652 (quoting *Glona v. Am. Guarantee & Liab. Ins. Co.*, 391 U.S. 73, 76 (1968)).

Here, as in *Stanley*, TMH is a biological parent who has established an actual parenting relationship with her child. That relationship is entitled to constitutional protection, even if, as Appellant argues, the Florida parentage

statutes do not confer on TMH the legal status of "parent."

B. The child's interest in an established parent-child attachment relationship also merits constitutional protection.

"Minors possess constitutional rights under both the federal and Florida constitutions." *State v. J.P.*, 907 So. 2d at 1110; *see also In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989). Those rights are independent of the rights of their parents. *See J.P.*, 907 So. 2d at 1115 n.5 (noting that juveniles could assert their own fundamental rights even if they lacked standing to assert the rights of their parents); *In re Jasmon O.*, 878 P.2d 1297, 1307 (Cal. 1994) ("Children are not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent."); *Oldfield v. Benavidez*, 867 P.2d 1167, 1172 (N.M. 1994) ("Although parents have certain rights regarding their children, the children also have certain fundamental rights which often compete with the parents' interests.").

In particular, in evaluating a child's interest in maintaining a relationship with a parental caregiver, it is not appropriate to assume that the child's interest merely mirrors the interest of the parent. A foster parent's constitutional claim might be undermined by her knowledge that the State can terminate the foster care relationship, but "[t]he children, of course, know nothing of this. They ordinarily develop an ever-increasing attachment and expectation of permanency as each month goes by in a stable setting." *Fla. Dep't of Children & Families v. Adoption*

of X.X.G., 45 So. 3d 79, 98 n.19 (Fla. 3d DCA 2010) (Salter, J., concurring). In addition, "'[t]here is good reason . . . to think that the consequences for relationship disruption are not identical for children and adults,' and that those consequences may well be far more significant for children." Joseph S. Jackson & Lauren G. Fasig, *supra*, at 40 (footnotes omitted).

This Court and the Supreme Court have repeatedly recognized that children have an interest in their established parent-child attachment relationships. *See, e.g.*, *Santosky v. Kramer*, 455 U.S. at 760 & n. 11 ("the child and his parents share a vital interest in preventing erroneous termination of their natural relationship"); *Stanley v. Illinois*, 405 U.S. at 657 (presumption that unwed father is unfit parent "needlessly risks running roughshod over the important interests of both parent and child"); *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d at 571 (clear and convincing evidence standard applies in termination of parental rights proceeding "[t]o protect the rights of the parent and child"); *see also id.* at 572 (Barkett, J., concurring) (clear and convincing proof of abuse, neglect or abandonment required to justify termination of a "'mother's parental rights in and to her child, and the child's corresponding rights in and to its mother'"); *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (suggesting that "to the extent parents and families have fundamental liberty interests in preserving [established familial or family-like] relationships, so, too, do children have these interests, and so, too,

must their interests be balanced in the equation.").

Neither this Court nor the Supreme Court has expressly held that a child's interest in an established parent-child attachment relationship is constitutionally protected, but the vital importance of such relationships to the child surely suggests that constitutional protection is warranted. Attachment relationships "engage children in the human community in ways that help them define who they are, what they can become, and how and why they are important to other people." *Environment of Relationships*, *supra*, at 1. They "shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, learning and cognitive growth," and "buffer young children against the development of serious behavior problems, in part by strengthening the human connections and providing the structure and monitoring that curb violent or aggressive tendencies." *Neurons to Neighborhoods*, *supra*, at 265. They are "essential to the development of emotional security and social conscience." *Young Children in Foster Care*, *supra*, at 1146. Parent-child attachment relationships thus form "the cornerstone for healthy psychological adjustment." David M. Brodzinsky et al., *Children's Adjustment to Adoption: Developmental and Clinical Issues* 13 (1998).

Moreover, "[a]ttachment relationships are vital for the maturing child, not only in the early years, but throughout development." Joseph S. Jackson & Lauren

G. Fasig, *supra*, at 26. "Attachment relationships with parents contribute to adolescents' self-esteem, social competence, emotional adjustment, behavioral self-control, and sense of identity." *Id.* (footnote omitted).[3]

The Court should therefore hold that a child's interest in maintaining an established parent-child attachment relationship is constitutionally protected, at least in the circumstances of this case.[4] Constitutional protection of family relationships is grounded in the importance of the "deep attachments and commitments" they entail, and "reflects the realization that individuals draw much of their emotional enrichment from close ties with others." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619-20 (1984); *see also Stanley v. Illinois*, 405 U.S. at 651-52 (describing importance of family and familial bonds); *Santosky v. Kramer*, 455 U.S. at 758-59 (describing parent-child relationship as "far more precious than any property right"); *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d at 571 (describing parent-child relationship as "sacrosanct"). For children no less than for

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[3] In addition to its critical psychological importance, a parent-child relationship entails substantial legal rights, including rights to support and maintenance, rights of inheritance, and rights to a host of statutory and other benefits such as social security, health insurance, survivors' benefits, and military benefits. *See Santosky v. Kramer*, 455 U.S. at 760 n. 11; *Elisa B. v. Superior Court*, 117 P.3d 660, 669 (Cal. 2005)

[4] Other factual contexts may present different issues. Whether constitutional protection should extend more generally to a child's relationship with a "psychological parent" who had no role in the decision to bring a child into the world and did not establish a parent-child relationship with the child from birth, *see generally* Br. of *Amici Curiae* ACLU et al., need not be decided in this case.

parents, these attachments are of paramount importance and merit protection.[5]

Here, it is undisputed that TMH engaged in day-to-day child-rearing activities with K for nearly four years from K's birth, and K established a bonded parent-child attachment relationship with TMH. If, as Appellant argues, Florida's parentage statutes (including Section 742.14) apply to deprive TMH of the legal status of "parent" to K, those statutes infringe K's constitutionally protected interest in her relationship with TMH, and can only be sustained if they are both "necessary to promote a compelling governmental interest" and "narrowly tailored to advance that interest." *J.P.*, 907 So. 2d at 1110. Whatever purpose those statutes serve in regulating the use of assisted reproductive technology generally, they serve no legitimate purpose as applied to couples like the parties here, who do not qualify as a "commissioning couple" but who make use of such technology in order to bring a child into the world to parent jointly.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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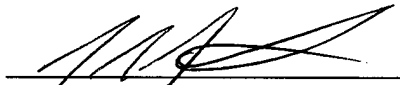
[5] A child's presumptive right to maintain attachment relationships with both parents is also recognized in international law. The United Nations Convention on the Rights of the Child, adopted to deter the violation of children's human rights in all countries, specifies that nations "shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." United Nations General Assembly, Resolution 44/25, November 20, 1989, Article 9, ¶ 3, Convention on the Rights of the Child.

Respectfully submitted,



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I HEREBY CERTIFY that this brief is submitted in Times New Roman 14–point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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