IN THE SUPREME COURT OF FLORIDA

In The Matter of The Adoption
Of: John Doe, Infant Baby Boy:

CASE NUMBER 72,593

BOB DOE and JANE DOE,

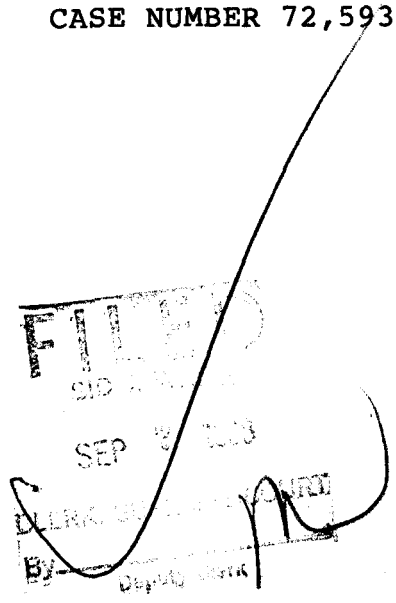
Petitioners,

vs.

RICHARD ROE and MARY ROE,

Respondents.

_____/



REPLY BRIEF OF PETITIONERS

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PRELIMINARY STATEMENT

The ultimate issues raised in this appeal are: (1) whether Richard Roe stepped forward to develop a parent-child relationship before John Doe was lawfully placed in the adoptive home; (2) whether Mary Roe can withdraw her valid consent after John Doe was lawfully placed in the adoptive home merely because her circumstances have changed and she has had a change of heart; and (3) whether Florida's Adoption Act is to be construed and applied in such a way as to provide any meaningful degree of protection to either the prospective adoptive parents or the adoptee from that point in time when the child is placed in the adoptive home and forward.

Petitioners, Bob and Jane Doe, submit that Florida law does not accord automatic veto power to a putative father who has wilfully refused to act as a parent toward the unwed mother and the unborn child (and who has sat back until after such time as the mother surrenders her rights and the child is placed in the adoptive home), before taking the first affirmative action to accept any responsibility of parenthood. Nor does Florida law place the child, or the prospective adoptive parents, at the complete mercy of the whims of a natural mother when the mother's change of heart is not articulated or known to the adoptive family at the time of placement.

The Petitioners stand by the statement of the facts made in the Initial Brief with its detailing of Richard's vastly superior economic resources, and his deliberate and cruel refusal

to provide meaningful economic or emotional support to the unwed mother while he simultaneously pursued a "relationship" of sorts with her. However, in light of the Respondents' factual assertions, some points bear immediate mentioning.

First, it should be readily apparent that were the true level of Richard's communication, support, and involvement to have been as represented in Pages 1 through 7 of the Answer Brief--no adoption decision would ever have been made by Mary. The trial court's factual finding, which was accepted by the Fifth District, was that Richard's support was negligible.

Second, Richard did not merely "favor" abortion--he pressed Mary continually throughout the entire first trimester to abort the child. (R-10,16,631-621) In fact, he pressed so hard for abortion that she sought counseling for herself and asked others to intervene to try and convince Richard to back off. (R-168-169,11-12) He was completely unfazed by these efforts and also upset at Mary for telling others about the pregnancy. (R-11-13,114,284)

Third, what Mary was telling Richard in March or April of 1986 was that she absolutely could not emotionally or economically raise two children as a single parent, and that their unborn child needed the stability of a two-parent home. (R-17,18) The Respondents' representation on Page 3 of the Answer Brief that from April of 1986 forward Richard had no further desire for either abortion or adoption, glosses over that by late March the time for obtaining a legal abortion had passed; and by April until some

point in July of 1986, Richard was in favor of adoption. (R-20-21,37-38,45,637)

Fourth, it is sheer speculation for the Respondents' attorney to engage in the argument that Mary would have refused any support from Richard that didn't have marriage "stamped" on it, as well as fundamentally inconsistent with the claim that Richard did provide meaningful support all along. Mary's own testimony was that she refused to beg Richard for help when her need was so obvious that common human decency should have prompted a response from Richard. (R-15) Richard's own testimony was that he was well aware of her predicament but that he made an intentional decision to withhold support from her despite his knowledge. (R-623-624) He conceded that his paying of one month's rent for Mary in February of 1986 coincided with the time period wherein he was pushing Mary to get an abortion. (R-611)

Finally, it should be obvious (in light of Richard's un-accepted invitation that she return to Arizona and live with him), that Mary felt she, her two-year old son, as well as her unborn child, were better off in Florida under the adoption arrangement than they would be living "under the thumb" of a man who would not commit to her and who had demonstrated a tremendous "schizophrenic" gap between his <u>words</u> of love and his <u>conduct</u> toward her, and the unborn child, during the entire pregnancy term.

ARGUMENT

POINT I

THE FIFTH DISTRICT COURT OF APPEAL ERRED BY INVALIDATING THE ORDER GRANTING JOHN DOE'S ADOPTION BY PETITIONERS OVER THE OBJECTION OF THE PUTATIVE, BIOLOGICAL FATHER WHOSE CONSENT WAS PROPERLY EXCUSED ON THE BASIS OF IMPLIED CONSENT AND EQUITABLE ESTOPPEL.

I. Parental Rights and the Fourteenth Amendment.

In order for this Court to properly interpret and apply Chapter 63, Fla. Stat. (1985) to the facts of this case, it is imperative that the "interests" of all the persons affected by this litigation not be cut loose from the constitutional mooring provided by the Fourteenth Amendment's guarantee of a liberty interest encompassing the parent-child relationship. On Page 14 of the Answer Brief, Respondents expressly invite this Court to analyze the biological father's rights, the Petitioners' rights, and the consent-and-waiver provisions of §§63.062 and 63.072, through a skewed constitutional framework because such a myopic analysis is conducive to their claim that biological father, Richard Roe, gained automatic, absolute veto power on the day he acknowledged paternity at the expense of all others involved in the adoptive process.

Beginning with Stanley v. Illinois, 31 L.Ed.2d 551 (1972) and extending through Lehr v. Robertson, 77 L.Ed.2d 614 (1983), the United States Supreme Court has had a great deal to say about the extent of a putative father's liberty interest in establishing a relationship with his out-of-wedlock child; as well as the legit-

imacy of non-blood family relationships. It is only by ignoring Smith v. Organization of Foster Families, 53 L.Ed.2d 14 (1977); Caban v. Mohammed, 60 L.Ed.2d 297 (1979); and Lehr v. Robertson, supra, that Respondents can make the claim that prospective adoptive parents have no "parental rights" i.e., a liberty interest in retaining custody of a child they are rearing. It is only by ignoring Stanley v. Illinois, supra; Quilloin v. Walcott, 98 S.Ct. 549 (1978); Caban v. Mohammed, supra; and Lehr v. Robertson, supra, that Respondents can claim Richard Roe has a constitutional right to exercise veto power, stemming from his filing of a piece of paper acknowledging his bare paternity status.

Three decisions which are of vital importance to this appeal because they have applied Lehr, supra, in the context of contested newborn adoptions are Petition of Steve B.D., 730 P.2d 942 (Idaho 1986); In Re Baby Girl M, 688 P.2d 918 (Cal. 1984); and In Re Baby Girl Eason, 358 S.E. 2d 459 (Ga. 1987).

The cases of Petition of Steve B.D., supra; In Re Baby Girl Eason, supra; In Re Baby Girl M, supra; are significant because of their treatment of the unwed father's Lehr "opportunity interest" in developing a parental relationship with his child who is "unilaterally" placed up for adoption, at or near birth, by the natural mother. These cases clearly indicate that the length of time available to an unwed father to affirmatively seize his opportunity interest turns on: (1) the extent of his knowledge, if any, of the pregnancy; (2) his attitude and conduct toward the unwed mother and his unborn child (i.e., whether he is supportive

or indifferent to the emotional and economic needs of the biological mother which are a consequence of the pregnancy, or whether she alone must deal with its responsibilities); (3) the extent of his knowledge, if any, of the adoption arrangements or plans; (4) whether he affirmatively acts as a responsible parent toward his child before or after the natural mother relinquishes her parental rights; and (5) whether he takes such affirmative action before or after his child is lawfully placed in the adoptive home in reliance upon the mother's consent.

Assuming early knowledge of the pregnancy, In Re Baby Girl Eason, supra; recognizes that the unwed father's constitutionally-protected opportunity interest begins at or near conception. Richard Roe was informed by Mary of the pregnancy within two or three weeks of conception so it was at that time that it first came within Richard's ability to act as a parent toward his unborn child. In their attempt to distinguish In Re Baby Girl Eason, supra, Respondents have completely misconstrued what the trial court did on remand in the unpublished opinion (which is included in the Appendix to Petitioners' Initial Brief). First, on remand, the Eason trial court conducted a seven-day evidentiary trial for the purpose of resolving two questions. One question was whether the biological father had abandoned or forfeited his opportunity interest in establishing a parent-child relationship with his child. The second question was whether the biological father was a fit person for custody. These two questions were completely independent in the sense that the biological father's

legitimation petition would be granted only if both questions were determined in his favor. Further, the questions were clearly treated separately by the court (with separate factual findings and conclusions of law), even though it chose to address both questions in its opinion. Therefore, it is a gross mischaracterization for the Respondents to state on Page 19 of the Answer Brief that the Eason biological father "was found unfit, and found to have abandoned the child by, among other things, attempting to sell the baby..."

Instead, the Eason biological father was found to have abandoned or forfeited his Lehr "opportunity interest" because his ambivalency throughout the pregnancy term resulted in the natural mother facing pregnancy and the unexpected prospect of parenthood without emotional or financial support. Some of the salient factors considered by the Court in reaching its conclusion that he let his opportunity interest slip away were: (1) he rejected the pregnancy by blaming her for it; (2) he provided little or no emotional support to the mother; (3) while there was continual contact between the natural parties, the level of parental responsibility assumed by the biological father remained negligible; (4) he made no effort to be involved with prenatal medical care or birthing classes; (5) he was aware the natural mother had taken substantial steps toward arranging for the child's adoption; (6) he did not support the mother financially, beyond providing an occasional meal or picking up an occasional dinner tab, even though he had available funds; (7) he paid no medical bills connected with the pregnancy prior to adoption litigation being initiated;

(8) although he knew when the baby was due to be born, he made no effort to be present at birth; (9) the natural mother was not antagonistic toward the father, did not engage in a pattern of intentionally-deceptive behavior toward him, or thwart him from acting as a parent toward his unborn child; and (10) he took his first affirmative action subsequent to the child being placed in the adoptive home in reliance upon the mother's valid consent.

Unlike Respondent Richard Roe, and unlike the fathers in Eason, Id., and Petition of Steve B.D., supra, the unwed father of In Re Baby Girl M, supra, seized his opportunity to act as a parent in the most diligent fashion possible under the circumstances. Two significant factors distinguish the Baby Girl M father from Richard Roe and fully justify the former being provided a veto power over the adoption. First, he was totally unaware of even the fact of pregnancy until after the child was born and only four days before she was surrendered by the natural mother for adoption. Second, his unequivocal request for custody was communicated prior to the child being placed in the adoptive home. In damning contrast, Richard Roe was equipped with vastly superior knowledge and with nine months worth of opportunities to act as a parent--yet he took no affirmative action until after John Doe was lawfully placed in the Petitioners' home. Richard Roe's knowledge even extended so far as to include the details of the adoption arrangement and a rough itemization of the associated expenses assumed by Petitioner. (R-86)

In Petition of Steve B.D., supra, the Idaho Supreme Court determined the unwed father had let his opportunity to establish a

relationship with his newborn son slip away until such time as his child had been placed in the security of the adoptive home. In so ruling, the Court took cognizance of both the nature of an unwed father's "parental rights" under Lehr v. Robertson, supra, and the child's "urgent need for permanence and stability." Supra, at 942. Like Richard Roe, the unwed father in Petition of Steve B.D., supra, sat back and watched his pregnant girlfriend drown, emotionally and financially; then gave trial testimony that it was always his intention to act as a parent to his child.

In summary, Petition of Steve B.D., supra; In Re Baby Girl M, supra; and In Re Baby Girl Eason, supra, demonstrate that an unwed father's constitutionally-protected "opportunity interest" does not extend so far as to allow him to sit back and wait until after the mother surrenders her rights, and then take legal action, after the fact, and expect to defeat the adoptive placement. Because Richard Roe failed to act timely and diligently, as an interested father would act under the circumstances, he has no constitutionally-predicated veto power in this adoption.

II. Parental Rights Under the Florida Adoption Act.

Even apart from the above-mentioned vital constitutional dimensions, the Respondents can point to no language in Chapter 63, Fla. Stat. (1985), indicative of a legislative intent to provide substantive veto power to an unwed father flowing automatically from the simple act of formally acknowledging paternity.

Nor can Respondents point to any case which has construed §63.062(1)(b)4 as creating such veto power.

Under the facts, it is important to note that since he had failed to support the unborn child in a repetitive and customary manner, Richard Roe's consent was not required under §63.062 until such time as the acknowledgment of paternity was filed. In Re Adoption of Mullenix, 359 So.2d 65 (Fla. 1st DCA 1978). Therefore, he was not entitled to notice. The mere fact that Richard Roe was the known biological father did not require that notice be given or his consent obtained. See Lehr v. Robertson, supra; In Re Adoption of Mullenix, supra.

However, his affirmative act of filing an acknowledgment of paternity was timely for purposes of bringing him within the category of unwed fathers whose consent is required unless excused by the court; and for purposes of assuring his day in court. Guerra v. Doe, 454 So.2d 1 (Fla. 3d DCA 1984).

In Guerra v. Doe, Id., the Third District recognized that an unwed father who files an acknowledgment-of-paternity, in sufficient time before the final adoption hearing, secures his due process right to participate in an adversary hearing on the issue of whether the need for his consent should be enforced or excused. The Third District's treatment of the consent-and-waiver provisions of §§63.062 and 63.072, and its interpretation of the legislative intent behind those provisions, stands squarely opposed to Respondents' claim that Richard has substantive veto power over this adoption by simple virtue of filing the acknowledgment-of-

paternity. Petitioners submit that what Richard obtained in filing the acknowledgment was not veto power but, instead, a procedural due process right to participate in an adversary hearing to determine whether or not he adequately seized his opportunity interest to act as a father, through his conduct toward Mary and the unborn child, before Mary relinquished her rights causing the child to be placed in the adoptive home.

On Page 24 of the Answer Brief, Respondents claim Judge Jorgenson's 1984 concurring opinion in Guerra v. Doe, Id., has been rejected in each district. They cite for supporting authority to a number of cases dating from 1979 to 1982 which do not deal with newborn adoptions!

The Third District's Guerra v. Doe, opinion (including Judge Jorgenson's concurrence), as well as Wylie v. Botos, 416 So.2d 1253 (Fla. 4th DCA 1984) deserve special scrutiny by this Court because in each of these cases, Florida appellate courts construed and applied the consent-and-waiver provisions of §§63.062 and 63.072, in the context of contested newborn adoption proceedings in order to balance the competing interests represented by the objecting biological parent(s), the prospective adoptive parents, and the child.

One indication of how strongly Guerra v. Doe, supra, points away from Respondents' veto-power position is that if the mere filing of an acknowledgment-of-paternity created substantive veto power, the appropriate remedy for Guerra would have been for the cause to be remanded with directions that an order be entered

dismissing the adoption action. Instead, the Third District remanded so that Guerra could participate in an adversary hearing to determine whether the consent requirement should be enforced or excused. Judge Jorgenson's specially-concurring opinion merely provided direction to the trial court by stressing that the primary issue on remand was to be the best interest and welfare of the child. In the related footnote, Judge Jorgenson continued to stress that the waiver provisions of §63.072 were not to be considered exhaustive in nature or number, or interpreted so strictly as to defeat the child's best interest and welfare, stating:

> Although the majority opinion recites that Guerra did not learn of the child's birth until after the beginning of the adoption process, it remains to be determined by the trial court whether, among other things, Guerra deserted or abandoned his purported child. The provisions of §63.072, Fla. Stat. (1981), offer some guidance but cannot be considered an exhaustive list when the paramount interest is the welfare of the child. (Emphasis added)

Supra, at 2.

Guerra v. Doe, supra at 2, also undercuts Respondents' claim that Richard Roe's rights are magically enhanced and the Petitioners' correspondingly diminished since Richard Roe filed his acknowledgment-of-paternity prior to the filing of the adoption petition. In Guerra, Id., the Third District indicated disapproval of the trial judge's action of dismissing the unwed father's affidavit of paternity on the basis of untimeliness, since it was filed after the adoption petition, stating:

> We do not think the legislature intended to curtail the rights of a natural father who did

> not consent to the adoption of his natural child and who properly filed an acknowledgment-of-paternity, albeit one month after the institution of the adoption proceedings.

Supra, at 2. There is simply no reason to apply a race-to-the-courthouse mentality to the Petitioners when such a mentality would not be applied to Respondents.

Far from being a departure or aberation from Florida's Adoption Act, Wylie v. Botos, supra, is the clearest example of the consent-and-waiver provisions of Chapter 63 being applied to facts virtually identical to the case at bar and in a manner consistent with the legislature's statement of intent which is found at §63.022(1) and (2)(k).

Section 63.022 contains the legislature's explicit statement of intent. Subsections (1) and (2)(k) provide:

> (1) It is the intent of the Legislature to protect and promote the well-being of persons being adopted and their natural and adoptive parents and to provide to all children who can benefit by it a permanent family life.
>
> (2) The basis safeguards intended to be provided by this act are that:
>
> > (k) The natural parent or parents, the adoptive parent or parents, and the child shall receive the same or similar safeguards, guidance, counseling and supervision in an intermediary adoption as they receive in an agency or department adoption.

When the Wylie Court affirmed the trial judge's action of granting the adoption over the biological father's objection (albeit on different grounds), it explained its ruling in terms of balancing competing interests by stating:

> To hold otherwise would be to grant the

> natural father even greater rights than the natural mother possessed, a result which we do not believe the legislature intended. What would happen in the case where a natural father of a child born out of wedlock had no actual knowledge of the natural mother's pregnancy and maternity until after a petition for adoption was filed, the question of possibly constitutional dimensions, is not presented to us, since the natural father here was at all times fully aware of such facts.

As §63.022 so plainly indicates, the Florida Adoption Act involves the balancing of potentially conflicting interests represented by the needs and best interests of the child; the respective rights of the natural and adoptive parents; and the need of society for finality and promptness in adoptive placement so that the benefits of a real home are available to the children of this State.

For the reasons already expressed in Petitioners' Initial Brief at Pages 42 through 45, Wylie v. Botos, Id., is "on point" with the present appeal and provided solid authority for the trial court's legal and factual findings that Richard Roe impliedly consented to the adoption of John Doe and is, therefore, now estopped to claim his written consent is required. The Fifth District erred in treating Richard Roe's filing of his acknowledgment before the adoption petition as a meaningful factor making Wylie v. Botos, supra, inapplicable to the present adoption given Guerra v. Doe, supra, and its sound rejection of a race-to-the-courthouse mentality.

The second reason the timing of Richard's first affirma-

tive act cannot be accorded dispositive weight is that his act follows the child's placement in the adoptive home. In the context of a private adoption, the rights of the prospective adoptive parents are immediately triggered by the direct placement of the child in the adoptive home. In The Interest of I.B.J., 497 So.2d 1265 (Fla. 5th DCA 1986). Therefore, the pivotal question is not whether Richard Roe filed his acknowledgment-of-paternity before or after the filing of the adoption petition--but whether he stepped forward before or after John Doe was lawfully placed in Petitioners' home. Wylie v. Botos, supra; In The Interest of I.B.J., supra.

On Page 23 of their Answer Brief, the Respondents start their argument for why trial courts have no discretion in contested adoption cases by asserting that the whole point of the 1973 Florida Adoption Act was to give a natural father like Richard Roe absolute control over an adoption. Respondents chide the trial court with the comment, "For some reason the trial court here was troubled with giving the natural father seeking custody absolute and arbitrary veto power over an adoption." This assertion, which reveals the core of Respondents' position, also reveals how fundamentally irreconcilable that position is with the legislature's explicit statement of intent found in §63.022. Perhaps the trial court found it hard to "buy into" Respondents' veto-power argument because of §63.022 standing alone, or perhaps it was a matter of considering §63.022 in conjunction with Guerra v. Doe, supra; Wylie v. Botos, supra; In The Interest of I.B.J., supra; the permissive

language of "unless consent is excused" and "the court may excuse" found, respectively, at §§63.062 and 63.072; as well as the expressions of legislative intent made during the Senate Judiciary Committee hearing by Senator Tom Gallen (See Appendix to Initial Brief).

In reference to Respondents' attack on the discussion of judicial power which took place April 10, 1975 in the Senate Judiciary Committee hearing on Senate Bill 41, several points need to be addressed. First, Senate Bill 41 concerned a 1975 Amendment which, among other things, created the provision for an unwed father to file an acknowledgment-of-paternity. The Bill was introduced by Senator Tom Gallen, who only two years previously had been responsible for introducing the 1973 Bill which ultimately became the Florida Adoption Act requiring an unwed father's consent.

The reason for appending the transcript excerpts from the Senate Judiciary Committee hearing is that Gallen's explanation of the 1975 proposed Amendment was prompting questions regarding judicial discretion. Additionally, he was fielding questions requiring him to explain the law then in existence, i.e., the Florida Adoption Act of 1973. Petitioners invite this Court to examine the dialogue in Appendix No. 2 between the speaker identified as "Wilson" and Senator Gallen, then draw its own conclusions as to the reasonableness of Respondents' footnote assertion on Page 24 of the Answer Brief that Gallen's explanations regarding judicial discretion and the child's best interests were directed to pre-1973 Florida law. Finally, when Wilson asked

Gallen if the 1975 Amendment would make an unwed father's consent absolutely required upon the filing of an affidavit of paternity, Gallen's response was "No" and he pointed to §63.062(1)'s permissive language of "unless consent is excused by the Court" to support his answer.

The significance of discussion engaged in by the Senate Judiciary Committee on Senate Bill 41 is that it strongly suggests it was not the legislature's intent to accord an unwed father absolute veto power over an adoption proceeding, or to take away reasonable discretion from the trial court, or to obscure the need for the court's primary concern to be the protection and promotion of the best interest and welfare of the child.

One possible explanation, not considered by Respondents, for why the legislature hasn't seen fit to amend the consent-and-waiver provisions of §§63.062 and 63.072 over the past twelve years is that the legislature apparently doesn't interpret those provisions in the same way Respondents have.

Based then upon the the legislative intent expressed in the Senate Judiciary Committee hearing on Senate Bill 41, the permissive language found in both §§63.062 and 63.072, Guerra v. Doe, supra; Wylie v. Botos, supra; In The Interest of I.B.J., supra; and §63.022, it is clear that Florida trial courts have the power to grant the adoption of an illegitimate child over the objection of a putative father (whose consent might be otherwise required by the filing of a post-birth and placement acknowledgment-of-paternity) by excusing that consent when the father has failed to timely grasp

his opportunity to be a responsible parent.

Whether it realized it or not, when the Fifth District reversed the order granting John Doe's adoption by Petitioners, it granted absolute and arbitrary veto power to a putative unwed father, over a newborn's adoption, for the first time since the Florida Adoption Act was created in 1973.

Additionally, the Fifth District's decision is totally inconsistent with the stated legislative intent of §63.022 to "protect and promote the well being" of all persons involved in the adoptive process and violates a host of public policy factors including, inter alia, the privacy rights of the unwed mother; encouraging the early placement and bonding of adopted children; protecting the psychological security of adoptive parents; and protecting the sanctity and privacy of the adoptive home.

By the force of his knowing and deliberate conduct, Richard Roe gave his implied consent to John Doe's adoption and is now estopped from claiming his written consent is necessary.

The Petitioners urge this Court to reverse the judgment below which invalidated the adoption of infant John Doe.

POINT II

THE FIFTH DISTRICT COURT OF APPEAL ERRED BY INVALIDATING THE ORDER GRANTING JOHN DOE'S ADOPTION BY PETITIONERS OVER THE OBJECTION OF THE PUTATIVE FATHER WHOSE WRITTEN CONSENT WAS PROPERLY EXCUSED ON THE BASIS THAT HE ABANDONED THE CHILD PRIOR TO THE CHILD'S PLACEMENT IN THE ADOPTIVE HOME.

It is legally possible for an unwed father to "abandon" a child who is placed up for adoption at or near birth by the natural mother when there is clear and convincing evidence the father let his Lehr "opportunity interest" slip away. In Re Baby Girl Eason, supra; Doe v. Attorney W, 410 So.2d 1312 (Miss. 1982); Petition of Steve B.D., supra.

In the case sub judice, the Fifth District erred in overturning the trial court's conclusion that Petitioners had shown by clear and convincing evidence that Richard Roe had abandoned infant John Doe by consistently refusing to assume as much parental responsibility as was possible under the circumstances. Through the fault of no one else, and for whatever reasons, Richard Roe simply failed to take the first step to develop any tie to this child, apart from the biological connection, before the needs and rights of others became paramount. In Re Baby Girl Eason, supra; Doe v. Attorney W, supra; Petition of Steve B.D., supra.

Richard Roe's failure to do so constitutes legal abandonment, under Chapter 63, when John Doe was placed up for adoption shortly after birth solely because of Richard's shirking of parental responsibilities.

Since Florida's Adoption Act does not define the term

"abandonment," Florida courts have conveniently turned to and applied the statutory definition of "abandonment" found in Chapter 39, Fla. Stat., which governs juvenile dependency and delinquency. Such a practice makes sense in the context of ordinary step-parent adoption actions or any adoption action where the adoptee is an older child. However, applying the §39.01(1) definition of abandonment to newborn adoption placements is, at best, awkward because an unwed father's avenues for showing parental responsibility to his unborn or newborn child are obviously different from the avenues which could be developed by the father as the child matures. In Matter of Adoption of Robin U, 435 N.Y.S.2d 659, 662 (Fam. Ct. 1981), the need for gauging the relationship of an unwed father to a younger child by a different set of criteria than that applicable for gauging the relationship of an unwed father to an older child was articulated as follows:

> There are pragmatic differences between the relationship of an unwed father with a newborn or a very young child and the relationship of an unwed father with an older child. The unwed father of a newborn or very young child does not have the opportunity to establish an ongoing relationship with his child through substantial and continuous or repeated contact so that the quality of his relationship with the child's mother, his public acknowledgment of his fatherhood and his acceptance of financial responsibility for the new child's birth must be used as indicia of his parental concern.

To put it bluntly, an unwed father who "walks away" from the responsibilities brought on by an unexpected pregnancy often

creates a crisis situation. Certainly, in this case, the negative consequences of Richard Roe's actions and inactions created a profound crisis jeopardizing his child's urgent need for stability and permanency; and jeopardizing Mary's urgent need to know what was the loving and responsible action to take, and whether she dare assume the emotional risk of becoming more deeply involved in the life of a child she felt unable to raise by herself in the long haul.

The trial court's factual findings regarding abandonment are well-supported by the record which demonstrates Richard cruelly chose to be oblivious to the urgent needs of Mary and their unborn child until such time as the Petitioners had stepped in to fill the gap between Richard's words and Richard's conduct. The trial court's legal conclusion that abandonment had occurred for the purpose of granting the adoption, over Richard's objection, is directly supported by In Re Baby Girl Eason, supra; Doe v. Attorney W, supra; and Petition of Steve B.D., supra; and is not inconsistent with §63.022; the consent-and-waiver provisions of §§63.062 and 63.072; Wylie v. Botos, supra; or Guerra v. Doe, supra.

Given the essential correctness of both the factual findings and the legal analysis, as to whether Richard Roe abandoned John Doe by throwing away his Lehr "opportunity interest," the Fifth District should have affirmed the trial court's abandonment findings. The trial court's effort to define its abandonment findings in terms of the §39.01(1) definition may

have been awkward, and may have warranted explanation or retraction on review, but it hardly warranted the Fifth District's action of disturbing a correct ruling on the issue of abandonment. See Postell v. State, 383 So.2d 1159, 1162 (Fla. 3d DCA 1980), (a correct ruling of a trial court should be sustained on appeal even if the trial court reached the correct result for the wrong reasons).

POINT III

THE FIFTH DISTRICT ERRED IN RULING IT COULD NOT CONSIDER THE BEST INTEREST OF JOHN DOE, NOW OVER TWENTY-TWO MONTHS OF AGE, AS AN APPROPRIATE AND COMPELLING FACTOR IN DETERMINING WHETHER TO SUSTAIN OR INVALIDATE HIS ADOPTION.

This point on appeal is not about how "attached" the Petitioners are to John Doe, although this is undoubtedly true. Rather, its primary focus is on John Doe and whether he has the right to remain in the adoptive home with his psychological parents.

The record in the case sub judice, leaves no question but that the best interest and welfare of John Doe dictate that he remain in the existing family relationship he shares with Petitioners. To "return" him to the biological father is to "return" him to an absolute stranger. Not only was the trial court's best-interest finding amply supported by the undisputed expert testimony of Dr. George Lindenfeld that severing John Doe's de facto family bonds would result in serious psychological damage--but the Fifth District explicitly accepted this finding.

Any case which focuses on the relationship between a parent and child necessarily raises the paramount question of what is in the child's best interest and welfare. Lehr v. Robertson, supra at 624; In Re Adoption of Cox, 327 So.2d 776, 777 (Fla. 1976); Guerra v. Doe, supra at 2; Fla. Stat. §63.022(1987).

Perhaps no other assertion made by Respondents so clearly highlights the unreasonableness of their interpretation of Chapter 63 than their argument that John Doe's best interest and welfare is

irrelevant to this appeal. John Doe is a human being, entitled to the protection Chapter 63 affords to children under the "best interest" doctrine. He is not a property item owned by Richard Roe. He is an innocent child who has the right, under the circumstances by which he came to be placed in the adoptive home, to remain in the only home he has ever known with the psychological parents who have nurtured him virtually from birth. It must be remembered that John Doe was first placed in the custody of Petitioners in reliance upon a valid consent executed by the natural mother, and at a point in time where Richard Roe had taken no affirmative action which would have required his consent under §63.062. Nor had he taken any affirmative action capable of preventing his Lehr "opportunity interest" from slipping away.

Accordingly, the bonding which exists in John Doe's de facto family unit, as a consequence of his daily interaction and emotional attachment to Petitioners, is a relevant and important factor in this Court's consideration of whether the Fifth District erred by invalidating the adoptive order.

At Pages 12, 13, 39, and 40 of their Answer Brief, Respondents make the argument that Petitioners wrongfully refused to comply with Respondents' post-placement request for custody of John Doe and therefore should not be allowed now to "create their best argument for keeping the child's custody" by drawing attention to the deep bonds which have grown over the last two years and the psychological harm which awaits John Doe if uprooted.

The problem with Respondents' argument is that the cases

of Small v. Andrews, 530 P.2d 540 (Ore. App. 1977) and Adoption of Baby Girl C, 511 So.2d 345 (Fla. 2d DCA 1987) involve situations where the would-be adoptive parents either had personal knowledge that the natural parent wanted to revoke her consent at the time of placement; or where the reaction of the prospective adoptive parents to a request for a change of custody was clearly indicative that no significant bonds had formed. In contrast, when Petitioners opened their hearts to John Doe, they did so without reservation and without the slightest inkling of what would transpire with Respondents.

In Small v. Andrews, supra, the unwed mother was an eighteen-year old unemployed girl with a one-year old daughter. The natural mother surrendered her daughter to a relative of the adoptive couple named Jessie Small on the day after signing a written consent. Mrs. Small lived in Edmonton, Oregon. Upon obtaining custody, Mrs. Small proceeded to California where she turned the child over to the adoptive couple, i.e., her son and daughter-in-law. Within two to three weeks after the child's placement, the natural mother contacted Jessie Small to express her desire to be re-united with her daughter. On the next day, the natural mother called the adoptive parents in California to communicate her change of heart. She was told then (in late July of 1973), the child would be returned if she would either pay the expenses associated in transporting the child back to Oregon, or if she would come to California to take custody of the child. However, the natural mother lacked the economic resources to pursue

either option. In early September, they refused to return the child when the request was made by a welfare caseworker. Also in 1973, the adoptive parents moved from California to Portland, Oregon without ever having initiated adoption proceedings in California and without notifying the natural mother of their move. The reviewing court upheld the trial judge's ruling which had returned the child to her mother.

Unlike the natural parent in Small v. Andrews, Id., Richard Roe is not a teenager who placed his one-year old child up for adoption. Nor is he distinctly socio-economically or educationally disadvantaged when compared to the Petitioners. Critically, the Petitioners never suggested they would be willing to give up custody of John Doe if reimbursed somehow or based upon performance of some other condition. However, it appears that the adoptive couple in Small v. Andrews, Id., were initially perfectly willing to return the one-year-old girl to her mother and that their later attachment to the child only flourished because the teenaged natural mother lacked the economic resources to retrieve her child. In contrast, John Doe became an instant member of Petitioners' family and was treated accordingly. This is evidenced by the manner in which he was immediately introduced to the members of the Petitioners' extended family and named after Jane Doe's terminally-ill father. (R-683,684)

Adoption of Baby Girl C, supra, is readily distinguishable since at the time the adoptive parents accepted the child into their home, they did so with personal knowledge and understanding

that the natural mother wanted to revoke her consent. Unlike either of the Respondents, the natural mother in Baby Girl C, Id., was a woman of limited intelligence who had initially signed a consent because of being told by a police detective she was facing arrest and jail time for some offense. In explaining its decision to affirm the trial court's denial of the petition for adoption, the Second District stated:

> As to the reason concerning the natural mother, she did not mislead appellants and was not the proximate cause of their pain. She withdrew her consent about a week after it had been given and before appellants took custody of, and developed their love for, the child.
>
> * * * * * *
>
> Why should not a single parent in circumstances like those of this natural mother, who was surely, as the trial court found, subjected to great pressure out of concern for her child if the mother went to jail, be entitled to revoke her consent a short time later before any would-be adoptive parents took custody of the child?

Id. at 352, 353. Unlike the prospective adoptive couple in Baby Girl C, Id., when the Petitioners opened their lives and home to three-day-old John Doe, they obviously were incapable of having personal knowledge the Respondents would be asking for custody of John Doe within a week.

Based on the above-mentioned dissimilarities between the circumstances by which John Doe was placed with Petitioners and those circumstances involving the adoptive placements in Adoption of Baby Girl C, supra, and Small v. Andrews, supra, it is entirely

appropriate for this Court to consider John Doe's best interest in light of Dr. George Lindenfeld's expert testimony regarding the extremely high probability that he will suffer serious psychological damage if removed from the only home and parents he has ever known.

Petitioners fully agree with Respondents that the threshhold question under Chapter 63 is whether the child is, in fact, adoptable either by means of acquired consents or by court excusal. Obviously, Points I and II of this appeal reflect Petitioners' contention that John Doe is adoptable because the written consent of Mary Roe was obtained, and the lack of a written consent from Richard Roe was properly excused by the trial court on the grounds of implied consent and equitable estoppel, and abandonment of the child by waiver of his Lehr "opportunity interest."

However, the Fifth District's assertion that the "best interest of the child" doctrine is irrelevant and extends no protection to John Doe is erroneous.

The Legislature's 1987 amendment to its §63.022 statement of legislative intent clearly indicates that John Doe's adoptability status is not to be determined by construing the consent-and-waiver provisions so narrowly as to result in an adoption ruling which is inimical to the child's best interest. The relevant portions of §63.022 read as follows:

> 63.022 Legislative intent--
> (1) It is the intent of the Legislature to protect and promote the well-being of persons being adopted and their natural and adoptive parents and to provide to all children who can benefit by it a permanent family life.

> (2) The basic safeguards intended to be provided by this Act are that:
>
> (a) The child is legally free for adoption;
>
> (b) The required person's consent to the adoption or the parent-child relationship is terminated by judgment of the court;
>
> * * * * * * *
>
> (l) In all matters coming before the court pursuant to this Act, the court shall enter such orders as it deems necessary and suitable to promote and protect the best interests of the person to be adopted.

Therefore, to the list of "basic safeguards" explicitly stated in §63.022, the Legislature has added language making it the highest judicial priority to "enter such orders as [the court] deems necessary and suitable" to protect the child's best interest.

The unequivocal language of §63.022(2)(l) requires the court to consider the best interest of every child who finds himself or herself the focus of an adoption proceeding; and to exercise appropriate discretion to ensure that adoptive rulings promote and protect the child's best interest. Accordingly, the Fifth District erred in concluding it had no choice but to declare John Doe's best interest irrelevant and invalidate an adoption it had found to clearly be in his best interest.

In conclusion, the best interest of John Doe is a legitimate and compelling factor in a court's determination of whether to sustain or invalidate his adoption under circumstances where the effect of granting the adoption is to recognize an existing de facto family unit; and the effect of invalidating his

adoption is to place him in the custody of an absolute stranger who happens to be his biological father. Under the circumstances of this case, John Doe has the right to remain with the existing stable parent-child relationship he shares with Petitioners. It would be a manifest injustice to not permit John Doe to be the Petitioners' child.

POINT IV

THE NATURAL MOTHER'S WRITTEN CONSENT WAS GIVEN KNOWINGLY AND VOLUNTARILY, AND IT IS IRREVOCABLE ABSENT FRAUD OR DURESS.

On September 14, 1986, Mary signed a written consent to the adoption of John Doe after months of considering her options. (R-356,358) At the time, she was twenty-five years of age, well educated, intelligent, and alert. In other words, she knew who she was, where she was, what she was doing, and why. (R-32)

Forty-five minutes before the intermediary arrived at the hospital with the consent form, Mary had informed the post-partum nurse, Janice Mahler, that she was certain she wanted the child placed for adoption. (R-506) She directed Mahler to remove the child to the nursery and said she did not want to see him anymore. (R-506) The record reflects she struggled with the adoption decision. The record also reflects that while she chose unsuccessfully to reach Richard, and several others, following the child's birth, she ultimately determined to go forward with the adoption. She made this decision on her own, after having the benefit of considerable counseling, both in Arizona and in Florida, beginning as early as February of 1986 with Joy Bagatell at Jewish Social Services.

In mid-August, approximately one month before signing the consent form, HRS social worker, Janice Yanke, went over the consent form with her and advised her of its irrevocable nature. She was cautioned by Yanke not to sign it if she had doubts about the adoption route after giving birth. (R-482)

She had been properly advised by the intermediary, just prior to her signing, regarding the consent form and the binding effect of her consent. (R-354,355) She correctly understood this and executed the consent out of recognition that she was ill prepared, emotionally or financially, to provide adequately for the needs of the second child born out-of-wedlock. (R-32,41,95) With her consent providing legal authorization, and representing the known wishes of Mary, the intermediary placed the baby in the adoptive home on Monday, September 15, 1986.

On these facts, Mary's consent is valid and cannot be withdrawn merely because she had a change of heart or circumstance or subsequently married the putative father of the child given up for adoption. Wylie v. Botos, supra; Grabovetz v. Sachs, 262 So.2d 703 (Fla. 3d DCA), cert. den. 267 So.2d 329 (Fla. 1972); Chartier v. John Doe, 11 Fla. Supp.2d 8 (Fla. 16 Cir., May 13, 1985); In Re Adoption of Cox, 327 So.2d 776 (Fla. 1976); Petition of Steve B.D., supra, Regenold v. Baby Fold, Inc., 369 N.E.2d 858 (Ill. 1977); Anonymous v. Anonymous, 530 P.2d 896 (Ariz. 1973); In Re G.K.D., 332 S.W. 62 (Mo. App. 1960). This is particularly so where the child is placed in the adoptive home prior to an act of revocation. See Adoption of Baby Girl C, supra; Welfare Div. of the Dept. of Health and Welfare v. Maynard, 445 P.2d 153, 155 (Nev. 1968); Acedo v. State Dept. of Public Welfare, 513 P.2d 1350, 1355 (Az. App. 1973).

Despite Respondents' wishful assertions to the contrary, the general rule in Florida regarding private adoption consents is

that a natural parent's consent is irrevocable unless tainted by duress or fraud. Fla. Stat. §63.082(5); In Re Adoption of Cox, supra, Grabovetz v. Sachs, supra; In the Interest of I.B.J., supra. Additionally, Florida law continues to require proof of fraud or duress by clear and convincing evidence. See Grabovetz v. Sachs, supra at 704.

This same rule of requiring a finding of fraud, duress, or undue influence exists in most other jurisdictions in an effort to balance the needs and rights of the child, as well as the needs and rights of both sets of parents involved in an adoption. See Petition of Steve B.D., supra; In Re Adoption of Child by P, 277 A.2d 566 (N.J. Super. A.D. 1971); In Re G.K.D., supra.

As Fla. Stat. §63.022(1987) evidences, it is the Legislature's intent in Chapter 63 to balance the potentially conflicting factors represented by the needs and best interest of the child; the respective rights of the natural and adoptive parents; and the need of society for finality and promptness in adoptive placement so that the benefits of a permanent homelife are available to the children of this State.

In the context of a private adoption, the countervailing rights and interests of the adoptive parents are triggered immediately upon placement of the child into the adoptive home in reliance upon a valid consent. In the Interest of I.B.J., supra.

In the case sub judice, the trial court correctly applied Florida law to the facts of this case when it concluded Mary Roe's consent was not made under duress or fraud. On review, the Fifth

District affirmed the trial court's finding in this regard, as well as its application of the "clear and convincing" standard of proof, stating,

> If consents to adoption were freely made voidable, the stability of adoptive families and the institution of adoption itself would be threatened.

The "clear and convincing" standard of proof is the appropriate standard to be applied to adoption consents, and is constitutionally reasonable, given the countervailing interest triggered by consent and placement.

Respondents' reliance on Santosky v. Kramer, 71 L.Ed.2d 599 (1982) to support their claim that it is unconstitutional to require Mary to show by clear and convincing evidence that her consent was tainted by fraud or duress is wholly misplaced since Santosky did not involve any adoption consent and was a "permanent neglect" proceeding.

Section 63.082(5)'s limitation of a natural parent's ability to revoke consent is a clear expression of public policy. A similar expression of public policy was commented on in People v. Catholic Home Bureau, 213 N.E.2d 507, 512 (Ill. 1966):

> Admittedly, a mother's decision to consent to her child's adoption by a couple to her unknown must be a most difficult one to make. Strong emotional factors militate against it. Once done, misgivings, not only may occur, but are probable, and it is not unlikely that attempts to rescind such consent will be made at a time when the child has been placed in an adoptive home, and new attachments formed. The complex psychological problems inherent in situations resulting from the former procedure permitting a natural parent to withdraw a consent at any time prior to actual entry of order of adoption with its resulting environmental instabilities for the child, were resolved in recent years

> by legislative action making such consent irrevocable in the absence of fraud or duress even in instances where the consenting parent is a minor. This clear expression of public policy may not be restricted by us, and where evidence indicates no fraud or duress was present, the consent must be held effective.

Also, in Acedo v. State Department of Public Welfare, supra, the Court quoted the following considerations which had been enunciated in Welfare Division of the Department of Health and Welfare v. Maynard, supra at 155:

> It is apparent that if in particular cases the unstable whims and fancies of natural mothers were permitted, first, to put in motion all of the flow of parental love and expenditure of time, energy, and money which is involved in adoption, and then, as casually, put the whole process in reverse, the major purpose of the statute would be largely defeated.
>
> * * * * * * *
>
> Public policy demands that the adoption act should not be nullified by a decision which causes the public to fear the consequences of adopting a child with the full knowledge that their efforts are at the whim and caprice of a natural parent.

The Acedo Court then applied the above-stated factors to the particular facts before it, stating:

> The fact that the child was in the home of the adoptive parents for only three days before petitioner expressed her desire to have him back, does not alter our conclusion. There must be some readily ascertainable event, upon which adoptive parents can be secure in the knowledge that the child in their home cannot be taken from them solely at the whim of the natural parents. As stated in Holman, supra, that event is when the child is first placed in the adoptive home.

Id. at 1355.

Adoption of Baby Girl C, supra, does not reasonably stand for the sweeping legal propositions Respondents have cited it for. The opinion itself contains caveats that its conclusions extend no further than the facts of the case.

There are at least four (4) critical reasons that make adoption of Baby Girl C, Id., factually inapplicable to the case at bar. First, the natural mother there initially signed the consent because of her fear of impending arrest and jail. Her fear was based on statements actually made to her by a detective, rather than on speculation or conjecture. Second, she was a woman of limited intelligence, and there was expert testimony that the combination of her relatively low I.Q. level and the stress of facing jail time would have impaired her ability to think rationally. Third, she communicated her revocation of the consent prior to the child's placement into the adoptive home. Fourth, when the adoptive parents accepted the child into their home, they did so with full knowledge that the natural mother wanted to revoke her consent. The Second District made it clear that its opinion, which allowed the natural mother to regain her child, was limited to the facts before it, stating:

> As to the reason concerning the natural mother, she did not mislead appellants and was not the proximate cause of their pain. She withdrew her consent about a week after it had been given and before appellants took custody of, and developed their love for, the child. As to the reason concerning the appellants, the record indicates that they took custody of the child knowing, as did H.R.S., that the natural mother's consent to the adoption had been withdrawn.
>
> * * * * * * *

> Why should not a single parent in circumstances like those of this mother, who was surely, as the trial court found, subjected to great pressure out of concern for her child if the mother went to jail, be entitled to revoke her consent a short time later before any would-be adoptive parents took custody of the child?
>
> * * * * * * *
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> Why should she not be able to effectively withdraw her consent a short time later where, as in this case, she did so before any would-be adoptive parents took custody of the child?

Id. at 352, 353.

Also, it is significant that the Adoption of Baby Girl C, Id. opinion is an appellate affirmation of the trial court's determination the natural mother had effectively revoked her consent. The reviewing court explicitly refused to "re-weigh the evidence" in recognition of the discretion accorded the trial court on conflicting evidence. See, Deakyne v. Deakyne, 460 So.2d 582 (Fla. 5th DCA 1984).

In conclusion, the evidence in this case did not demonstrate that Mary's signing of the consent was the product of the type of duress which permits revocation, or fraud. Both the trial court and the Fifth District Court of Appeal correctly applied Florida law to the facts of this case when it concluded Mary's consent was not made under duress or fraud. Undoubtedly, Mary engaged in enough deceptive conduct while she was in Florida to warrant a nagging conscience. However, that hardly constitutes legal duress or fraud.

POINT V

DENYING NATURAL PARENTS THE ABILITY TO WITHDRAW CONSENT TO ADOPTION BEFORE JUDGMENT IS NOT VIOLATIVE OF EQUAL PROTECTION OR DUE PROCESS.

The Equal Protection Clause does not deny the states to treat different classes of people in different ways. However, to withstand constitutional scrutiny, the classification must be reasonable, as opposed to arbitrary, and have a fair and substantial relation to the object of the legislation. In Re: Adoption of Malpica-Orsini, 331 N.E. 486 (N.Y. App. 1975). The State does not violate the guarantee of equal protection merely because the classifications made by its laws are imperfect. Id. at 489.

The object of adoption laws is a humanitarian one of establishing the means of creating a nurturing homelife for a child, independent of the biological connection. 2 Am.Jur.2d Adoption §3.

Florida law recognizes and accommodates two (2) means of adoption. In the private or intermediary adoption, the infant is usually placed in the adoptive home within a few days of birth. In the agency adoption, the child is first surrendered to the custody of the agency. As this Court recognized in Interest of I.B.J., supra, at 1266, private adoptions differ from agency adoptions because the direct placement of the child into the home immediately triggers the rights of the adoptive couple. In the private adoption context, consent is irrevocable, absent fraud or

duress, in order to protect the psychological security and privacy interests of both the child and the would-be adoptive parents from the whims and caprices of biological parents who later have a mere change of heart or circumstance. However, in an agency adoption, consent can be withdrawn in the discretion of the parent prior to the child being adjudicated dependent, since the child has remained in the custody of the agency.

Florida's accommodation of both agency and privacy adoptions under Chapter 63 is not unconstitutional merely because differences between the two means of adoption happen to adversely impact Respondents. The Respondents might have a bona fide equal protection argument if Florida law required an unwed parent to utilize the private adoption means. However, the choice between the two means lies with the parent(s) who seeks to place a child for adoption. Also, these alternatives are equally available without regard to the marital status, gender or race of the natural parents.

Second, the private adoption route serves very well the parent who has a certain adoptive profile and who seeks to fully participate in the placement decision. Mary Roe was such a parent when she signed the consent on September 14, 1986. (R-188)

Private adoption serves very well the natural parent (and the adoptive parent), who wants to insure that the newborn bonds as early as possible in the security of the adoptive home in contrast to temporary attachment to a foster parent. Mary Roe

was such a parent on September 14, 1986.

Under the circumstances of this case, private adoption provided Mary with a flexible, dignified means of responding to the economic and emotional uncertainties she faced as a consequence of being left on her own to deal with the pregnancy.

Obviously, private adoption is consistent with public policy because it promotes the earliest placement of a child so that nurturing and bonding can occur to the benefit of all concerned.

In short, there is no equal protection violation because a parent who chooses a private adoption for his or her child is not similarly situated with the parent who chooses an agency placement.

However, agency and private adoptions are similar in three (3) critical respects: (1) The biological parent must relinquish his right to the child; (2) a licensed social worker must evaluate the prospective adoptive parents and environment; (3) a judge must review the case and enter an order granting or denying adoption. By means of these similarities, Chapter 63 provides "the same or similar safeguards, guidance, counselling, and supervision in an intermediary adoption..." as is available in an agency adoption. Fla. Stat. §63.022(k)(1987).

Denying natural parents the ability to withdraw consent before judgment is a reasonable, non-arbitrary distinction between private and agency adoptions that is wholly justified by the countervailing interests that arise once the child is placed

in the adoptive home. Because the welfare of the child and the psychological security of the adoptive home are legitimate state interests, the state has the constitutional ability to limit parental freedom and authority once there has been a relinquishment of parental rights through a valid consent, or by abandonment of the Lehr "opportunity interest". Prince v. Massachusetts, 88 L.Ed.2d 645 (1944); Petition of Steve B.D., supra; In re: Baby Girl Eason, supra.

In terms of equal protection and due process rights of an unwed father (who has failed to seize his opportunity to be a parent), it is important to note what the United States Supreme Court had to say in Quilloin v. Walcott, supra at 555:

> Appellant contends that even if he was not entitled to prevail as a matter of due process, principles of equal protection require that his authority to veto an adoption be measured by the same standard that would have been applied to a married father. In particular, appellant asserts that his interests are indistinguishable from those of a married father who is separated or divorced from the mother and is no longer living with his child, and therefore the State acted impermissibly in treating this case differently. We think appellant's interests are readily distinguishable from those of a separated or divorced father, and accordingly believe that the State could permissibly give appellant less veto authority than it provides to a married father.

Richard Roe has no constitutional right to veto this adoption, or to withdraw his implied consent. See also, Lehr v. Robertson, supra at 627.

The unwed father is not necessarily entitled to be

treated exactly as the unwed mother or the married father, if he is not similarly situated. See generally, Kendrick v. Everheart, 390 So.2d 53 (Fla. 1980); DeCosta v. North Broward Hospital, 497 So.2d 1282 (Fla. 4th DCA 1986); Collinsworth v. O'Connell, 508 So.2d 744 (Fla. 1st DCA 1987). In the context of adoption proceedings, principles of due process and equal protection do not require that an unwed father be given veto power if he has not seized as much parental responsibility toward the child as is possible under the circumstances. Quilloin v. Walcott, supra, at 555; Lehr v. Robertson, supra at 627; Petition of Steve B.D., supra.

Due process is not violated simply because notice of the hearing need not be given to a parent who has executed a consent under Chapter 63. It was well within Mary's authority to waive her right to notice whether such right is based on constitutional or statutory principles. See, Turner v. Turner, 383 So.2d 700, 703 (Fla. 4th DCA 1980).

As for Richard, he waived his potential right to notice by not grasping his opportunity to be a parent to this child. Lehr v. Robertson, supra at 627. Also, under Fla. Stat. §63.062, notice need not be given to a putative father who has not provided repetitive, customary support. Adoption of Mullenix, supra. Richard received all the due process to which he was entitled when his act of acknowledging paternity after the child's birth secured his day in court to determine the issue of whether his statutory need for consent should be enforced or

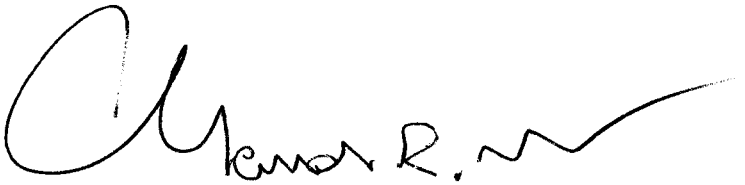
excused.

In conclusion, Florida may constitutionally limit the ability of natural parents to withdraw their consent to a private adoption once the child is placed in the adoptive home.

CONCLUSION

Based on the foregoing legal authorities and arguments, the Petitioners, Bob Doe and Jane Doe, request this Court to reverse the judgment below which invalidated the adoption of the infant, John Doe.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail delivery to John L. O'Donnell, Jr., DeWolf, Ward & Morris, P.A., 1475 Hartford Building, 200 East Robinson Street, Orlando, Florida 32801, Attorney for Respondents, Donald J. Sasser, Post Office Box M, West Palm Beach, Florida 33402, Cynthia L. Greene, 100 North Biscayne Boulevard, Suite 1607, New World Tower, Miami, Florida 33132-2380, Elaine N. Duggar, 1300 Thomaswood Drive, Tallahassee, Florida 32312, Nancy Rainey Palmer, 5200 South Highway 17/92, Casselberry, Florida 32707, Cynthia S. Swanson, 515 North Main Street, Suite 200, Gainesville, Florida 32601, Attorneys on behalf of the Family Law Section of The Florida Bar, this 6th day of September, 1988.

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