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Orig

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

JAMES W. COX

Petitioner

vs. CASE NO. 82,967

DELORES DRY, DISTRICT ADMINISTRATOR, DISTRICT 8, STATE OF FLORIDA, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

Respondent

_____/

BRIEF OF AMICUS CURIAE FLORIDA CATHOLIC CONFERENCE

On review from the District Court of Appeal,
Second District State of Florida

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INTRODUCTION

This brief is filed on behalf of the Florida Catholic Conference, Inc. The Conference was established by the Catholic Bishops of Florida in 1969 to represent the Catholic Church in dealing with the secular community, including the state and federal governments.

The purposes of the Conference as stated in the Charter are as follows:

> To take an active and cooperative role in health, education and welfare activities that promote the material and moral well-being of the people of the State of Florida.
>
> To provide an easily accessible channel of communication between Catholics in Florida and church, secular and other groups in matters affecting the common good; and to assist in the solution of problems pertaining to the general welfare.

INTEREST OF AMICUS CURIAE

The FCC has been active in matters involving education, health, social and pro-life matters. Each of the seven dioceses making up the Conference has a Catholic charities organization which has established a licensed child placing agency as part of its social welfare activities in the communities it serves. Each of these agencies is involved in the placement of children for adoption, the counseling of women contemplating placing their children up for adoption, the counseling and investigation of families that seek to adopt, and administering to families (whether natural or adoptive) in trouble. They have standards for the placement of children which conform to the teachings of the Catholic Church. Homosexual activity and certain lifestyles are deemed immoral and objectionable by the Church (as they are by an overwhelming majority of the other denominations in the United States and by a majority of Americans) and are considered contrary to the best interests of the child in placing it for adoption.

The FCC also has a pastoral interest in reaching out to homosexuals to help them to live a moral and healthy lifestyle. All dioceses have various ministries to homosexual persons. In 1976 the National Conference of Catholic Bishops stated:

> "Homosexuals, like everyone else, should not suffer from prejudice against their basic human rights. They have a right to respect, friendship and justice... Homosexual activity, however, as distinguished from homosexual orientation, is morally wrong."[1]

In 1993 the FCC reaffirmed this statement, but also stated

> "Legislation must not make homosexual behavior or lifestyles a protected or approved activity...It should not seek to equate legal marriage and homosexual relationships."[2]

Finally, the FCC has a pastoral interest in the institution of marriage. Both the Church and the State recognize that marriage between male and female is the foundation of the family and of society; is basic to morality and civilization; and is of vital interest to the State, society and its individual members.[3]

The weakening of the marriage bond, particularly in the past 30 years, has been widely viewed as contributing to the weakening of society as a whole.

The decision of this Court in this cause could have a direct, immediate and substantial impact

- on the adoption services provided by the seven dioceses of Florida to the Catholic community of Florida.

- upon the activities of all other church related and non-church related adoption agencies, and on intermediaries who place children for adoption.

- upon the children to be placed for adoption; the natural parents of the children to be placed for adoption; and prospective adoptive parents who do not engage in homosexual conduct.

- as a precedent on laws regulating sodomy, adultery, and other consensual sexual conduct, and upon the question of same sex marriage, which is now prohibited by Florida Statutes Section 741.04.

- on laws regarding insurance, property, inheritance, pensions and like matters.

- as an advocacy tool to persuade people that homosexual conduct is a socially-approved lifestyle.

As counsel for HRS frankly states on page 3 of the Answer Brief,

> "The placement agency...may be an intermediary, a state licensed child placing agency, or the Department (HRS)... Because the Petitioner applied to HRS, (Respondent's brief) will refer to HRS only. *However, these principles should be equally applicable to the other State regulated entities."* (Emphasis added).

Likewise, counsel for Petitioner argues on page 4 of her brief that "...Section 800.02 (the sodomy Statute) is unconstitutional..." and, in effect, invites the Court to declare it so.

The People of the State of Florida, through their elected representatives in the Legislature, have designated homosexual conduct as one type of conduct which they believe is inimical to the best interests of the child to be placed for adoption. Amicus believes there is ample rational basis for the Statute, including the interest of society in preserving and promoting intact heterosexual families, and the roles of father and mother in raising of children, which all studies agree is the best forum for the rearing of future citizens of society. This does not discriminate against single parents, but it does promote

the well being of adopted children and is well within the authority of the Legislature to determine.

The relief requested by petitioner would interfere with the rights safeguarded to the FCC, and to all Floridians, by the First and Fourteenth Amendments to the United States Constitution and Section 3 of Article 1 of the Florida Constitution.

SUMMARY OF ARGUMENT

Adoption as we know it originated in the middle of the last century out of a concern for the promotion of child welfare. It is entirely statutory in origin and seeks to promote the best interests of the child by attempting to replicate the ideal family as nearly as possible.

Like most jurisdictions Florida Statutes require that adoption be confirmed by a court judgment entered after a study of the child and its natural and adoptive parents has been made to assist the court in determining the best interests of the child. The areas of study and the criteria of selection involve value judgments in selecting adoptive parents. The suitability of prospective parents for rearing a particular child is the chief concern under investigation.

Since the number of couples seeking to adopt children far exceeds the number of children available for adoption and choices must be made, the State and adoption agencies may constitutionally prefer child placement to be made with persons who approximate the ideal, rather than the dysfunctional, social environment for the child.

The modern concept of "homosexual' and "homosexuality" is of recent origin, also dating back no earlier than the middle of the 19th Century. The modern use of the term started by describing sexual acts with members of the same sex and now includes psychological identity and self-selected membership in a group or community of persons holding like values.

The opinion of the District Court of Appeal properly construed the statute as referring only to homosexual conduct.

There is no scientific evidence that any form of conduct is a conditioned response beyond the control of the actor. The Legislature has a Constitutional right to regulate conduct harmful to the public interest and impose sanctions on, and withdraw privileges from, those who engage in such conduct.

Under our democratic form of government Courts are required to defer such value judgments to the Legislature absent Constitutional prohibitions. There are no Constitutional prohibitions against the exclusion of those who engage in homosexual conduct from the pool of prospective adoptive parents. On the contrary, there is ample rational basis for the Statute. It should therefore be held to be Constitutional.

FIRST POINT

Modern adoption laws make the best interest of the child the primary consideration in the placement of children for adoption. There is no constitutional right to adoption.

Adoption as we know it is of recent origin. In ancient Greece and Rome and certain later cultures the welfare of the adoptive parent in this world and the next was the primary concern. Continuity of the male line in a particular family for political, religious or economic considerations was the main goal, depending on the nation. The person adopted invariably was male and often adult. Little attention was paid to the welfare of the one adopted.

The impact of Roman civil law upon the legal systems of Europe left its mark on the adoption laws of a number of European and Latin American nations, and on the laws of Texas and Louisiana, which were colonized by French and Spanish settlers.[4]

The right of adoption was unknown to the English common law and exists only by Statute[5]. The reason for this has been attributed in part to the availability of social devices

in England which serve to protect the continuity of family titles and estates; and in part to other legal means for protecting and caring for the dependent or homeless child. The orphanages described by Charles Dickens are one such device. Another device, the shipment of the orphans of England to Canada, and those of New York to the midwestern states, to be given over to farmers and others in a form of indentured service, has been dramatized in TV movies and novels in the past few years. [6]

Contemporary laws and practices aim to promote child welfare and are generally regarded as but one facet of the State's program to protect its young. This movement began in mid-nineteenth century. The first adoption statute providing for judicial approval of such child-adult alliances was passed in Massachusetts in 1851. The last state to adopt such a law was Texas in 1930. England first passed an adoption statute in 1926. [7]

These laws endeavor to erase the relationship between birth parent and child and create a wholesome replacement as nearly as possible.

> "Today adoption cannot be defined as merely the juridical act creating certain civil relations between people. It is really a social process by which a child becomes a member of another family. It involves a number of community institutions, such as the legislature, the court, social welfare agencies, and religious institutions."[8]

Like most jurisdictions, Florida requires that before an adoption judgment can be entered a study must be made of the child and its natural and adoptive parents to assist the court in determining the best interests of the child. The study continues after the child has been placed in the adoptive home.

Normally a study of adoptive parents includes information about health, physical condition of the home, neighborhood where they live, reputation in the community, history and current functioning of their marriage, their perceptions and expectations about parenthood, their age, sex, nationality and class preference in relation to the child they

hope to adopt, and their expectations about that child. It will also include an opinion on whether the child's best interest will be furthered by the adoption.[9]

Adoption services to the natural parents include counseling by a social worker who helps them to plan for the child's future and to decide whether to keep the child or give it up for adoption[10].

The services to the child include a study of its developmental history, family history and a medical and psychological examination.

Thereafter,

> "(w)hen a child becomes available for adoption, the agency makes a further determination regarding the applicants' suitability for the particular child, and it endeavors to match the particular adoptive parents with a particular child. Physical and emotional characteristics of both parents and child are considered. A child with special needs (through physical handicap, membership in a minority group, or advancement past infancy) requires parents with special qualifications and characteristics".[11]

> "The focus is on prospects for the child's social and psychological development, and **the suitability of the adoptive parents is usually the chief concern in the investigation.**"[12]

Value judgments are a necessary part of child placement for adoption. Because of America's diversity these decisions often are controversial. For example, placing children in adoptive homes where the parents have racial characteristics similar to the child, on the grounds that children can thus become more easily integrated into the family group and community, is strongly supported by black social workers. On the other hand, as far back as 25 or more years ago some agencies encouraged mixed race adoptions in suitable families. A successful interracial adoption program of the Catholic Service Bureau in Florida was commented on favorably in a Legislative staff report on adoption services in

the State of Florida.[13] A United States Senator has introduced legislation supporting interracial adoptions [14]

The statement that the number of babies available for adoption, even the so called "hard to place" children, exceeds the number of couples who will adopt them, has not been true for more than 30 years.

> "(O)ver the last two decades applicants for adoption have outnumbered available children by an approximate ratio of seven to one (nonrelative adoptions only). This shortage in the supply of infants has led to the development of a lively black market in adoptable children. High fees are paid by prospective adopters to persons who can arrange for the placement of a child."[15]

Florida's law on intermediaries was passed to regulate this "black market"[16].

Therefore, it is appropriate for preference in child placement to be made with persons who approximate the ideal, rather than the dysfunctional, environment for the child. The conduct of practicing homosexuals is deemed not only less than ideal, but detrimental to the welfare of the adopted child, not only by the Legislature but also by many independent social studies.[17]

As set forth hereinafter, the place for society to make enforceable value judgments concerning adoption is in its duly elected Legislature, and not in the courts. If the encouragement of transracial adoptions over the objection of the National Association of Black Social Workers is a proper legislative matter,[18] then the Legislature is also the proper place to determine the suitability of particular forms of conduct of prospective adoptive parents. This is especially true where homosexual conduct has been universally condemned and is intertwined with family values and child rearing.

SECOND POINT

There is no constitutional right to engage in homosexual conduct. The Legislature has the right to impose sanctions on those who engage in it. Both the Legislature and private citizens have the Constitutional right to withdraw privileges from those who engage in such conduct, particularly where the privileges involve the custody and control of children.

Like the modern concept of adoption, the modern concept of "homosexual" and "homosexuality" is of recent origin. The earliest usage of the word "homosexual" listed in the Oxford English Dictionary is a use by Havelock Ellis in 1897. The earliest use in any language was in two anonymous German pamphlets in 1869[19]

There are four different concepts commonly included in these two words.

- First, the term is used to describe specific sexual acts with members of the same sex.

- Second, the term refers to patterns of sexual or romantic attraction to persons of one's own gender, whether or not these preferences lead to behavior.

- Third, the term refers to a psychological identity in which one defines one's self in terms of one's sexual attraction.

- Finally, the terms refer to membership in a group or community of persons holding like values, similar to ethnic, religious and cultural minorities[20]

The Opinion of the District Court of Appeal properly construed the statute as referring only to the concept of homosexual conduct.

The briefs of Petitioner and the Amici Curiae supporting his position go into detail on the current theories of the nature and cause of homosexual feelings rather than conduct.

- Some argue that sexual preference (as it was called before homosexual activists changed the term for political purposes in the late 1970's) is caused by genetic or

prenatal hormonal factors.[21] Although American science is engaged in a study to map out the identities and functions of the approximately 100,000 human genes, and approximately 40% have been mapped out to date, there has been no gene found that causes homosexual feelings or behavior. No study has found any correlation between physical conditions of the child at birth and any specific acts of conduct.

- Other researchers have considered early family relationships, classical conditioning, social learning throughout the life span, and other factors.[22]

- Another approach suggests that "... the very concept of sexual orientation (is) a phenomenon specific to particular cultures."[23]

- Finally, some researchers speculate that elements of both biology and culture shape sexual conduct.[24]

A critique of the studies cited by Petitioner and his supporters is set forth in the Amicus Curiae brief of the Rutherford Institute. It also cites studies coming to conclusions opposite those of Petitioner's cited studies.

Studies on both sides merely confirm the wisdom of the ages:

- We are all born with aptitudes. We all use these aptitudes through conduct which is freely chosen. Conduct repeated over time forms character.

- For example, we are all born with a need to eat food and drink liquid to sustain life. Whether our national diet is spaghetti and chianti, or sushi and saki, depends on the culture we live in. Whether we diet ourselves into anorexia or gorge ourselves into becoming as big as Sumo wrestlers is, at least in the beginning before a habit has been formed, an act of free will.

- The same thing is true with sexual behavior. As stated by Meyer and Freeman:

> "First, from birth we receive a set of genitalia and the developing neuropsychological capability of responding to tactomotor stimulation...

> "Secondly, **all subsequent sexual behaviors are learned socially** through information mediated by other human beings, with no intrinsic differences whatsoever in the acquisition process, regardless of what is learned....
>
> "Thirdly, once acquired, interpersonal **sexual behavior is maintained by the reinforcement value of** genital gratification as well as by **numerous social reinforcements such as peer status, socially mediated self reinforcement, positive responses from partners, and one's sexual self image. The perception and the payoffs provided by our society are crucial** in determining whether or not individuals accept a homosexual adjustment." (Emphasis added).[25]
>
> - Thus, conduct (except in the mentally ill) is an act of free will.

It is the position of the HRS and the FCC that conduct is the subject of the statute, and that the origins of preference/orientation are irrelevant and immaterial to the issue before this Court. The issue is behavior or conduct, not physical condition. The Legislature has a constitutional right to legislate rewards or punishments for conduct.

Petitioner argues that he has a constitutional right to engage in homosexual conduct without incurring the social ostracism of his fellow citizens and legal sanctions against such conduct. On the contrary, there is no constitutional right to engage in homosexual conduct. Such conduct is judged harmful to the public interest,[26] therefore it can be prohibited and criminal sanctions imposed on those who engage in it[27]. In addition, the right of private citizens to boycott others whose conduct they deem to be offensive is constitutionally protected.[28]

If the state may impose a criminal penalty as a sanction against homosexual conduct because it is considered harmful to the health and welfare of the general public, and non-governmental sanctions may be imposed by private individuals, then *a fortiori,* such conduct may constitutionally be considered harmful to small, helpless children, and the state and private adoption agencies may deny the privilege of adoption to persons who engage in such conduct.

THIRD POINT

The State Legislature has the constitutional authority to make this public policy decision

In the case at bar, the Second District Court of Appeal stated:

> "We reverse because the plaintiffs failed to establish that the legislature lacked the constitutional power to make this public policy decision. The debate over the nature of homosexuality and the wisdom of the strictures that our society has historically placed upon homosexual activity cannot and should not be resolved today in this court. For the purpose of governance, the legislature is the proper forum in which to conduct this debate so long as its decisions are permitted by the state and federal and constitutions."[29]

This is classic constitutional law. As Justice Terrell observed 50 years ago:

> "This Court is committed to the doctrine that one who challenges the constitutional validity of a legislative act must overcome, (1) the presumption that it is valid, (2) that all doubts must be resolved in favor of its validity, (3) that if there is any reasonable theory upon which its validity can be upheld it is the duty of the courts to resolve that theory in favor of its validity, and (4) if confronted by two theories of interpretation one of which results in striking it down while the other results in upholding it, it is the duty of the Court to adopt the latter interpretation if consistent with reason. Courts are never permitted to strike down an act of the Legislature because it fails to square with their individual social or economic theories or what they deem to be sound public policy.
>
> "If as judges we were permitted to strike down acts of the Legislature because of these grounds, then constitutional validity may be made to turn on the state of my liver or digestion when confronted with the statute, or since there are various processes of reasoning among us constitutional validity may, as said by Sir John Seldon as to equity, depend on the length of the Lord Chancellor's foot. We are not

> permitted to speculate on whether an act is wise or rational.."[30]

As stated in **State v. Bales**[31]

> "The test of legislative power is constitutional restriction; what the people have not said in their organic law their representatives shall not do, they may do."

The principle is well established that legislative enactments carry a strong presumption of validity, with all doubt resolved in favor of the constitutionality of a statute.[32] Any questions as to the wisdom, need or appropriateness of a particular enactment are for the Legislature.[33] When reviewing statutes, courts have the duty, if reasonably possible and consistent with constitutional rights, to resolve all doubts in favor of the statute's constitutionality.[34] If a statute can be interpreted in a way which will uphold its constitutionality, courts must adopt that interpretation.[35]

If a statute is regularly passed by the Legislature and there is no constitutional limitation upon the power of the Legislature to pass such an act, the act is valid, however hard and oppressive that it may seem to those regulated by it.[36]

Petitioner does not point to any specific provision of the Federal or State Constitution that clearly proves the invalidity of Florida Statutes Section 63.042 (3). On the contrary, he uses the vague concepts of right to privacy, due process and equal protection to claim a perception of unconstitutionality.

The right to privacy does not apply. As pointed out above,[37] adoption involves not only the prospective adoptive parents but also the child, the natural parents, the adoption placement agencies, the court, and society as a whole, for up to 18 years of the child's life as a minor. Adoption is not a private act.

Due process does not apply. The irrebuttable presumption that homosexual conduct can be proscribed has been held constitutional in **Bowers v. Hardwick.**[38]

Equal protection is tested by whether the classification has any rational basis. A case similar to the case at bar is **Hamilton v. State**[39]. In that case Defendant sought to have that portion of Florida Statutes Section 893.13 making unlawful the sale and possession of cannabis declared unconstitutional. Like Petitioner, he proffered articles and decisions on the nature of cannabis. This Court held that the challenge failed the reasonable basis test because:

> "There continues to be authority supporting the position that the health hazards of cannabis justify its prescription and its present classification."[40]

The briefs of HRS and the Rutherford Institute contain numerous citations to studies holding that homosexual conduct is inherently harmful and should continue to be classified as such.

As in the Hamilton case,

> "(a)lthough there is substantial expert opinion to the contrary, the fact that there continues to be expert opinion supporting the reasons which prompted the Legislature to enact this statute is sufficient to constitute a continuing rational basis for the act.[41]

Therefore this Court should deny the requested relief.

FOURTH POINT

> **The relief sought by Plaintiff would be a tool to persuade people to accept homosexual conduct as a legitimate lifestyle and to compel those who believe such conduct is wrong or harmful to change or hide their beliefs. This action is contrary to the First Amendment of the United States Constitution and Article 1, Section 3 of the Florida Constitution.**

This case is really about more than the parenting of a handicapped or otherwise hard to place child, as suggested by Petitioner in his briefs. It is also about using the power of the judiciary to force social change and the acceptance of homosexual conduct.

Parenting confers a respected status on the parent.

> **"Parental status.** While it is common to think of adoption as serving to confer certain statuses on the child, it also confers the status of parenthood on adults. In societies in which nonparenthood is somewhat stigmatized and the desire for children is great, there may even be competition for adoptable children. Currently this is the case in the United States...."[42]

Because parenthood confers a respected status, the judicial grant of that status through adoption bestows legitimacy on homosexual conduct, because, the reasoning goes, if the state grants the right to adopt to those who engage in it, then homosexual conduct must be acceptable and those who believe otherwise are wrong.

The Legislature has denied this. Petitioner asks this Court to take sides against the Legislature in a social, cultural and political effort to compel public acceptance of cultural legitimacy for homosexual acts by allowing the use of children, and the favorable status of parenthood, as pawns and tools in this social/cultural/political campaign.

As a noted homosexual activist wrote in a homosexual newspaper for a homosexual audience:

> "(P)romoting homosexuality is exactly what the gay movement is all about. This doesn't mean promoting homosexuality in the Anita Bryant sense of recruiting young children at playgrounds. It means promoting homosexuality as an acceptable and viable means of expression, on a par with and equal to heterosexuality. Achieving this cultural acceptability is why a gay movement exists..."[43]

Other observers have noted:

> "The most significant impact of the (Massachusetts Homosexual Rights) Law...was its effect on public

> consciousness; **the role it would play in bringing about a change in cultural acceptance of same sex relations**."[44]
>
> "When government passes homosexual rights legislation, **it sends a message to society that the homosexual lifestyle is legitimate, perhaps on a par with marriage and family life, and that the government is so committed to this value that it will bring force to bear against those who wish to manage their businesses in accordance with a different code of ethics**. Persons who believe the homosexual lifestyle is sinful, immoral, or destructive of traditional family values are given a Hobson's choice under homosexual rights laws - either reject these deep personal beliefs as a code of business ethics or get out of business."[45] (Emphasis Added)

The effects of the relief petitioner requests may lead to court orders or bureaucratic regulations that present this Hobson's choice to the FCC - either reject the Church's teaching against homosexual conduct, or get out of the adoption service area altogether. Such a State-mandated choice violates the First and Fourteenth Amendments to the United States Constitution and Article 1, Section 3 of the Florida Constitution.

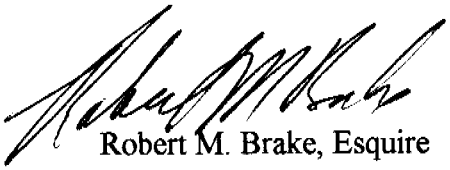
For this reason this Court should deny the requested relief.

CONCLUSION

Constitutionalizing one side of a social issue is an invitation to civic turmoil. The history of the Prohibition Amendment is proof of this.

This Court should not constitutionalize one side in this political struggle by forcing a partisan political solution on the other side, contrary to the U.S. and State Constitutions. Instead, it should leave the politics to the Legislature, where the Constitution places it. Since the statute to which Petitioner objects is fairly debatable, it is Constitutional, and this Court should deny Petitioner's requested relief.

Respectfully submitted,



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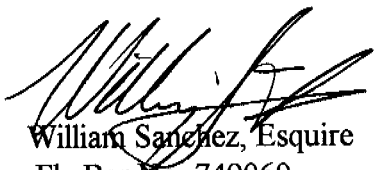

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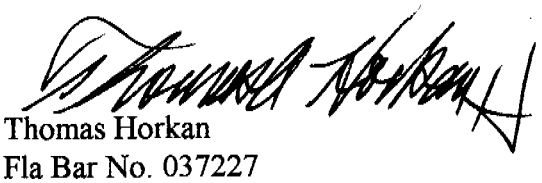

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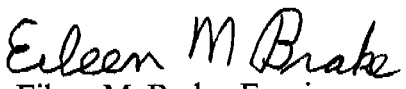

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1 To Live in Christ Jesus (n.52), 1976, National Conference of Catholic Bishops

2 Discrimination on the basis of sexual orientation policy of the Florida Catholic Conference, March 3, 1993

3 25 Fla Jur 2d Family Law, Section 12, page 61, and cases cited.

4 Encyclopedia Britannica, 1967, Volume 1, Page 165-166.
New Catholic Encyclopedia , McGraw Hill, 1967 Volume 1, Pages 136-138.

5 25 Fla Jur 2d Family Law, Section 175, Page 239; Encyclopedia Britannica, op cit; New Catholic Encyclopedia, op cit

6 See the review of Brady, "*Theory of War*" in the Wall Street Journal, Tuesday, July 12, 1994 under the headline "*A Novelist imagines Grandpa as boyhood in bondage.*" A copy is set forth in the Appendix of Amicus.

7 Encyclopedia Britannica, New Catholic Encyclopedia; op cit, mte 4

8 New Catholic Encyclopedia, 1968 Vol 1, at page 137.

9 Ibid.

10 Ibid

11 New Catholic Encyclopedia, 1968, vol 1 at page 138.

12 International Encyclopedia of the Social Sciences, MacMillan Co & The Free Press, 1988, vol 1, p 97

13 Florida House of Representatives Committee on Health and Rehabilitative Services, page 12, (December, 1970)

14 *Metzenbum breaches the adoption color barrier,* The Wall Street Journal, Thursday, July 24, 1994.

15 International Encyclopedia of the Social Sciences, MacMillan Co & The Free Press, 1968, vol 1, page 98; *Eligible Adopters Surpass Available Number of Babies.* The Miami Herald, Thursday, February 11, 1971, page 9C. *Black Market Babies, Couples Pay Big Fees to Get Children Fast. Abortion, birth control cuts supply through agency; a lawyer earns $165,000.00.* The Wall Street Journal, Tuesday, September 14, 1971.

16 Florida Statutes Section 63.097e

17 See the Amicus Brief of the Rutherford Institute, pages 3-15, for a detailed analysis of studies on the issue

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19 Encyclopedia of Psychology, Second Edition, John Wiley and Sons, 1994.

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25 Meyer and Freeman, *A Social Episode Model of Human Sexual Behavior*, 2 Journal of Homosexuality, Winter, 1976-77, Page 123

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27 **Bowers v. Hardwick,** 478 US 186 (1986)

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29 Slip Sheet Opinion, page 2

30 **Ball v. Branch** 154 Fla. 57, 16 So 2d 524, 525 (1944)

31 Fla 1936, 123 Fla 41, 166 So 289 at 297

32 **State v. Kinner,** Fla, 1981, 398 So 2d 1360.

33 **State v. Bales**, FLa 1977, 343 So 2d 9

34 **Falco v. State,** Fla 1981, 407 So 2d 202

35 **Miami Dolphins Ltd. v. Metropolitan Dade County**, Fla 1981, 394 So 2d 981

36 **Charlotte Harbor and N.R. Company v. Welles**, 1919, 78 Fla 227, 82 so 770, AFF's 260 US 8 67 L. Ed. 100 43 S. Ct. 3.

37 See footnote 8

38 See footnote 27

39 Fla, 1978, 366 So 2d 8

40 Ibid at 10

41 Ibid at 10

42 Op Cit, Note 12

43 Randy Schilts, *The Queering of America,* The Advocate, January 2, 1991 at 33.

44 Comment, *Sex, Lies and Civil Rights: a Critical History of the Massachusetts Gay Rights Bill,* 26 Harvard CR - CL L. Rev. 549 at 610 (1991)

45 Richard F. Duncan, *Who Wants to Stop the Church: Homosexual Rights Legislation, Public Policy, and Religious Freedom,* Notre Dame Law Review, Vol. 69, number 3, page 393 at 413-414

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by regular U.S. mail this 8 day of August, 1994 to Doris A. Bunnell, Esquire, 608 15th Street, West Bradenton, Florida 34205; Nina E. Vinik, American Civil Liberties Union Foundation of Florida, 225 N.E. 34th Street, Suite 102, Miami, Florida 33137; Marc E. Elovitz, Esquire, & William B. Rubenstein, Esquire, American Civil Liberties Union Foundation, 132 West 43rd Street, New York, New York 10036; Anthony N. DeLuccia, Jr., Esquire, District Legal Counsel, P.O. Box 60085, Ft. Meyers, Florida 33906; Linda K. Harris, Deputy General Counsel HRS, 1323 Winewood Boulevard, Bldg. 1, Suite 407, Tallahassee, Florida 32399-0700 Maria Rodriguez, Esquire, Farella, Braun & Martel, 235 Montgomery Street, 30th Floor, San Francisco, California 94104; Ira J. Kurzban, Esquire, Plaza 2650, 2650 S.W. 27th Avenue, Second Floor, Miami, Florida 33133; The Rutherford Institute; attn: Alexis I. Crow, Esquire, P.O. Box 7482, Charlottesville, VA. 22906-7482; John M. Ratliff, Esquire, Children First Project, Legal Services of Greater Miami, Inc. Post Office Box 871189, Miami, Florida 33137; William E. Adams, Jr., Esquire, NOVA Southeastern University, Shepard Broad Law Center, Civil Law Clinic, 3305 College Avenue, Fort Lauderdale, Florida 33314

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