IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-261
L.T. Case No. 5D09-3559

D.M.T.,

Petitioner,

vs.

T.M.H.,

Respondent. /

AMICUS CURIAE BRIEF OF AMERICAN ACADEMY OF ASSISTED REPRODUCTIVE TECHNOLOGY ATTORNEYS IN SUPPORT OF RESPONDENT

On Review from a
Decision of the Fifth District Court of Appeal

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STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

Amicus curiae American Academy of Assisted Reproductive Technology Attorneys (AAARTA) is a specialty division of the American Academy of Adoption Attorneys (AAAA), a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of adoption law. AAARTA is a credentialed, professional organization dedicated to the advancement of best legal practices in the area of assisted reproduction and to the protection of the interests of all parties, including the children, involved in assisted reproductive technology matters. AAARTA's members are attorneys who have represented clients in at least fifty assisted reproduction technology matters.

AAARTA's members have represented many thousands of individuals and couples who have used assisted reproduction to form their families and medical clinics who have provided the necessary services. AAARTA believes that its members' extensive experience representing clients involved in assisted reproduction can be of significant assistance to this Court in considering this case and its potential impact on the thousands of families formed through assisted reproduction.

SUMMARY OF ARGUMENT

This case presents an important issue of first impression in Florida—namely, whether Florida will apply the same principles to determine the parentage of a

child born through assisted reproduction to a same-sex female couple as it applies to children born through assisted reproduction to opposite-sex couples. Florida statutes do not address the specific situation in which two women use ovum sharing and an anonymous sperm donor to have a child together; however, chapter 742, Florida Statutes, provides significant guidance about how such a case should be resolved. As this case makes clear, Florida courts must determine the legal parentage of children born through assisted reproduction under circumstances not specifically addressed in Florida statutes. Amicus urges this Court to do so in this case by holding that the statutory principles in chapter 742, including the legislature's recognition of intended parents, must be applied equally to a same-sex female couple—either by interpreting the relevant statutes in a gender-neutral manner or, in the alternative, by holding that the statutes do not apply and holding that T.M.H. is a legal parent under the common law. Either route would bring Florida courts in line with other state courts that have addressed this emerging issue. Additionally, although both intended parents in this case have a biological connection to the child, this Court should clarify for the courts below that—consistent with the approach taken by the legislature in chapter 742—when a couple uses assisted reproduction to procreate a child with the intention of raising the child together, both partners are legally accountable as the child's parents, even if they do not both have a biological connection to the child.

ARGUMENT

I. AS MORE FAMILIES USE ASSISTED REPRODUCTION TO HAVE CHILDREN, COURTS MUST DETERMINE THE LEGAL PARENTAGE OF CHILDREN BORN UNDER NEW CIRCUMSTANCES.

In the past few decades, the number of children born through assisted reproduction has increased dramatically, due in part to technological advances that permit in vitro fertilization and egg harvesting. Those medical technologies help intended parents who are otherwise unable to have children of their own create a family. Most couples who use technologies such as donor insemination and surrogacy to have children are opposite-sex married couples. Increasingly, however, these procedures are also used by same-sex couples, unmarried heterosexual couples, and single individuals who seek the opportunity to become parents.

According to the Centers for Disease Control, the use of assisted reproduction has doubled over the past decade, and more than 1% of all infants born in the U.S. every year are now conceived using assisted reproduction. Centers for Disease Control and Prevention, *Assisted Reproductive Technology* (April 19, 2012), *available at* http://www.cdc.gov/art/. According to the National Survey of Family Growth, by their early 40s, 19 percent of women have used some sort of infertility service (including advice), 2.6 percent have had artificial insemination, and 0.7 percent have used another form of assisted reproduction.

Naomi Cahn and the Evan B. Donaldson Adoption Institute, *Old Lessons for A New World: Applying Adoption Research and Experience to Art,* 24 J. Am. Acad. Matrim. Law. 1, 6 (2011). Since 1976, an estimated 25,000 surrogate births have taken place in the United States. *See* Judy Keen, *Surrogate Relishes Unique Role: And Science Has a Place in the Family, Too,* USA Today (Jan. 23, 2007), *available at* 2007 WLNR 1297188. And over the past fifty years, it is estimated that approximately one million families have been created through the use of donor sperm or eggs. Naomi Cahn, *The New Kinship*, 100 Geo. L.J. 367 (2012).

Because the use of assisted reproduction has increased so rapidly, including relatively new options such as gestational surrogacy and the ovum-sharing procedure used in this case, the laws addressing the parentage of children born through assisted reproduction are still lagging behind the technology. Statutes on the parentage of children born through assisted reproduction, to the extent that they exist at all, vary from state to state, and, at best, address only some of the circumstances under which assisted reproduction is being used. As a result, state courts across the country increasingly are being called upon to decide the legal parentage of children born through assisted reproduction under circumstances not specifically addressed by legislation—as this Court must do in this case. *See In re Roberto d.B.*, 923 A.2d 115, 117 (Md. 2007) ("The law is being tested as these new techniques [of assisted reproduction] become more commonplace and accepted").

Given the strong public policy imperative to find legal parents, when presented with such cases, courts in other states have extrapolated existing statutes to apply to situations not contemplated by the legislature or, in some cases, developed new common law definitions of parentage to ensure that all children are recognized and protected. As one court noted: "A child cannot be ignored. Even if all means of artificial reproduction were outlawed, . . . courts will still be called upon to decide who the lawful parents . . . are . . . . These cases will not go away." *In re Marriage of Buzzanca*, 61 Cal.App.4th 1410, 1428-29, 72 Cal.Rptr.2d 280 (Cal. App. 4th 1998).

In cases involving the legal parentage of children born through assisted reproduction under circumstances not specifically addressed or covered by legislation, two leading judicial trends are apparent. In some cases, courts have held that parentage statutes using gendered terms must be interpreted in a gender-neutral way to address new uses of assisted reproduction and avoid raising serious constitutional concerns. *See, e.g., In re Roberto d.B.*, 923 A.2d at 117 (in gestational surrogacy case, courts must interpret Maryland's paternity statute, which allows men to rebut paternity based on evidence of the lack of a genetic relationship, to apply equally to women). In other cases, courts have exercised their equitable power to address uses of assisted reproduction not covered by statutes and to declare that a person who agrees to conceive a child through

assisted reproduction with the intention of parenting the child is a legal parent under the common law. *See, e.g.*, *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005) (holding lesbian partner who consented to have a child through artificial insemination with her female partner is legal parent under common law).

In this case, amicus urges the Court to hold that both of the women who used assisted reproduction to bring a child into the world and who have raised the child together for many years are legal parents. Specifically, amicus urges the Court to hold that the gendered definition of "commissioning couple" in section 742.13(2), Florida Statutes, must be interpreted to apply equally to women and men and to same-sex couples in order to avoid serious equal protection concerns. In the alternative, amicus urges the Court to hold that T.M.H. is a legal parent under Florida's evolving common law, based on the same principles that underlie the legislature's recognition of a child's "intended parents" as the child's legal parents in sections 742.13 and 742.14, Florida Statutes. In either case, the overriding concern must be to ensure that parents are held responsible for the children they intend to bring into the world, and that children who are born through assisted reproduction are protected by having a legally protected relationship with both of their intended parents.

II. THIS COURT SHOULD RECOGNIZE T.M.H. AS A PARENT.

Florida has enacted a number of statutes that address some of the most common ways in which couples and individuals use assisted reproduction to have children. These statutes do not specifically address a situation "where the child has both a biological mother and a birth mother who were engaged in a committed relationship for many years and who decided to have a child to love and raise together as equal parental partners." *T.M.H. v. D.M.T.*, 79 So. 3d 787, 790 (Fla. 5th DCA 2011). Nonetheless, the existing statutes provide significant guidance about how to determine the legal parentage of a child born under these circumstances in a manner that is consistent with Florida's existing laws and policies regarding assisted reproduction and the best interests of children, as well as with the constitutional mandates of due process and equal protection. As explained below, amicus urges this Court to hold that T.M.H. is either a statutory parent under a gender-neutral interpretation of sections 742.13(2) and 742.14 or a legal parent under the common law based on the clear intent of the parties to raise, support, and cherish their child together as a family unit.

A. T.M.H. Is Not A "Donor" Under Section 742.14, Florida Statutes.

Section 742.14 does not apply to deprive T.M.H. of her parental rights, because she is not a "donor" for purposes of the statute. *Id.* "Put simply, the [Respondent] certainly did not intend to be a 'donor,' as referenced in the statute,

the [Petitioner] certainly did not act as if the [Respondent] was a 'donor,'" and she was not "a donor as that term was used by the legislature." *T.M.H.*, 79 So. 3d at 804 (J. Monaco, concurring). Indeed, in *Lamaritata v. Lucas*, 823 So. 2d 316, 318-19 (Fla. 2d DCA 2002), the court recognized that a donor is a person who has agreed to provide genetic material with the intent not to be a parent. Where there was a clear intent that for the genetic parent to be a parent to the child, he or she is not a donor.

That conclusion is consistent with decisions from other states recognizing that a donor is a person who agrees to provide eggs or semen for use by another person or persons with no intention of being a parent to the resulting child. *See e.g.*, *K.M. v. E.G.*, 117 P.3d 673 (Cal. 2005) (finding no "true egg donation" where the woman "did not intend to simply donate her ova," but rather "provided her ova to her lesbian partner with whom she was living so that E.G. could give birth to a child that would be raised in their joint home."). The purpose of a statute such as section 742.14, which provides that a donor is not a parent, is to enable individuals to donate semen or eggs for use by others without acquiring any parental rights or responsibilities. Those statutes benefit individuals and couples who must use assisted reproduction to create families, by establishing that the intended parent or parents—not the donor—will be the child's legal parent(s). At the same time, they also protect donors from being vulnerable to paternity or maternity claims. But,

where a person provides eggs or sperm in order to use assisted reproduction to have a child with another person, with the intention and agreement that both parties will be parents and raise the child together, treating that person as a "donor" would defeat the purpose of the statute and wrongly deprive the person of parental rights, as well as the child of its due process rights to a legal relationship with the child's parent(s). Put simply, the defining feature of a donor is not simply the provision of eggs or sperm for use in assisted reproduction; rather a "true donor" must also agree that he or she is providing the reproductive material to facilitate the creation of a family by others, with no intent to be a parent.

For example, in 1989, the Colorado Supreme Court construed a Colorado statute providing that "[a] donor is not a parent of a child conceived by means of assisted reproduction" unless he is the mother's husband. *See In Interest of R.C.*, 775 P.2d 27, 28 (Colo. 1989) (citing Colo. Rev. Stat. Ann. § 19-4-106(2)-(3)). The petitioner alleged that he and the mother had agreed he would be treated as the father of any child conceived through his sperm. *Id.* at 28. The court held that where the mother and the donor "agree that the donor will be the natural father and act accordingly . . . that agreement and subsequent conduct are relevant to preserving the donor's parental rights despite the existence of the statute." *Id.* The statute "simply does not apply in that circumstance." *Id. See also In re Sullivan*, 157 S.W.3d 911 (Tx. App. 2005) (where unmarried opposite-sex couple agreed in

writing to co-parent a child conceived through artificial insemination using the man's semen, the man had standing to assert paternity); *C.M. v. C.C.*, 377 A.2d 821 (N.J. Juv. & Dom. Rel. Ct. 1977) (donor statute did not apply where the parties, an unmarried opposite-sex couple, "had a long-standing dating relationship" at the time of the insemination and were "contemplating marriage"). In this case, T.M.H. is not a donor because "she always intended to be a mother to the child born from her ova and was a mother to the child for several years after its birth." *T.M.H.*, 79 So. 3d at 792.

Some courts have also recognized that applying a statute such as section 742.14 to a person who has provided eggs or sperm with the intention of being a parent to the resulting child, and who has in fact acted as a parent to that child, would raise serious constitutional concerns. For example, in *McIntyre v. Crouch*, 780 P.2d 239 (Or. App. 1989), a man who provided sperm to an unmarried woman claimed that he had provided his sperm "in reliance on an agreement . . . that he would have parental rights." *Id*. at 242. The Oregon statute provided that unless a donor is the woman's husband: "Such donor shall have no right, obligation or interest with respect to a child born as a result of the artificial insemination." *Id*. at 243 n.1 (citing Or. Rev. Stat. § 109.239(1) (2005)). The Oregon Court of Appeals held if the petitioner could prove that he and the mother had entered into a parenting agreement prior to the insemination, then applying the statute to treat

him as a mere donor with no parental rights would run afoul of the Supreme Court's holding in *Lehr v. Robertson*, 463 U.S. 248, 261-62 (1983), that a biological father who takes prompt and meaningful steps to assume parental responsibility for a child has a constitutionally protected interest as a parent. *McIntyre*, 780 P.2d at 244-46; *see also C.O. v. W.S.*, 64 Ohio Misc.2d 9, 639 N.E.2d 523 (Ohio Com.Pl. 1994) (applying donor statute to man who provided sperm to unmarried woman would violate due process because the man and the mother, at the time of the procedure, had agreed there would be a parental relationship between the man and the child).

Similar constitutional concerns would be raised by treating T.M.H. as a mere donor in this case. T.M.H. did not "donate" an egg so that D.M.T. could be a single parent. Rather, she agreed to use assisted reproduction to create a family with D.M.T. and to conceive a child they have raised together since the child's birth. No less than an unmarried father who grasps the opportunity to develop a parental relationship with his biological child, T.M.H. has a constitutionally protected interest in her parental relationship with the parties' child.

B. This Court Should Find T.M.H. Is a Legal Parent Under A Reasonable, Gender-Neutral Interpretation of Section 742.13(2).

T.M.H. should be recognized as a legal parent not only because she has a biological and parental relationship to the child, but also because she and D.M.T. used assisted reproduction to create a family—to bring a child into the world with

the intention of raising the child together. Florida statutes do not specifically address the situation in which two women use assisted reproduction to have a child, but they do address a closely analogous situation. Sections 742.13 and 742.14 provide that a man and a woman who use assisted reproduction to have a child together are a "commissioning couple" and will be treated as the child's legal parents. Section 742.13(2) defines a "commissioning couple" as "the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents." Section 742.14 excludes a "commissioning couple" from the definition of a donor, who relinquishes all parental rights. There is no statutory requirement that the couple be married.[1] Taken together, those provisions make clear that an unmarried man and woman who conceive a child using donated sperm or eggs will be treated as the child's legal parents because they are the "intended parents."

Section 742.13(2) does not specifically address a same-sex female couple using assisted reproduction to have a child; nonetheless, that provision provides significant guidance about how the legislature intended for a child's legal

[1] In contrast, in the context of gestational surrogacy, the legislature does impose a marital requirement. *See* § 742.15(1), Fla. Stat. (gestational surrogacy contract is not binding unless commissioning couple is legally married). The absence of any such limitation in the definition of commissioning couple in section 742.13 indicates the legislature did not intend to limit intended parents only to married couples in other contexts.

parentage to be determined under circumstances that, but for the parties' sex, are identical to those at issue here. Indeed, as the concurring opinion rightly notes, "[b]ut for the fact that the appellant and the appellee are of the same sex, we would probably consider them to be a 'commissioning couple' under the statute, and the outcome of this case would be easy." *T.M.H.*, 79 So. 3d at 804 (J. Monaco, concurring). In sections 742.13 and 742.14, the legislature has determined that couples who are intended parents and who conceive a child through assisted reproduction should be recognized and held responsible as the child's legal parents, even if only one has a biological relationship to the child. There is no reason to apply a different rule or analysis simply because both members of the couple are of the same sex.

Amicus therefore urges this Court to interpret the term "commissioning couple" in section 742.13(2) to include T.M.H. and D.M.T. and other similarly situated same-sex female couples. In contrast, interpreting section 742.13(2) to exclude T.M.H. and D.M.T. merely because they are both women would lead to an absurd result and raise serious equal protection concerns. Under both the Florida and U.S. Constitutions, laws that discriminate based on sex are presumed to be invalid and are subject to heightened scrutiny. *See, e.g.*, *U.S. v. Virginia*, 518 U.S. 515, 531 (1996) ("Parties who seek to defend gender-based government action must demonstrate an "exceedingly persuasive justification" for that action.");

Frandsen v. Cty. of Brevard, 800 So. 2d 757, 760 (Fla. 5th DCA 2001) ("The question is whether the proffered justification is 'exceedingly persuasive': the government must show that the [gender-based] classification serves important governmental objectives, and that the discriminatory means are substantially related to those objectives.") (citing *Virginia*, 518 U.S. at 533)).

Applying section 742.14 to permit an unmarried man to use assisted reproduction to have a child with a female partner while barring a similarly situated woman from doing so would discriminate based on sex, thereby calling the constitutionality of the statute into question. *See In re Reed's Estate*, 354 So. 2d 864 (Fla. 1978) (prior family allowance statute under which deceased male's needy spouse may receive money from decedent's estate pending settlement, but not the spouse of a deceased female, is irrational sex-based classification and denies equal protection under state and federal constitutions); *Wilcox v. Jones*, 346 So. 2d 1037 (Fla. 4th DCA 1977) (holding that to recognize the right of a mother of an non-marital child to maintain a wrongful death action but to refuse to recognize the corresponding right of the father would violate equal protection clauses of the state and federal constitutions).

Under well established Florida law, this Court should adopt a construction of the statute that avoids raising those constitutional concerns where doing so is reasonable and consistent with the purpose and spirit of the law and avoids

unreasonable, harsh or absurd consequences. *See Tyne v. Time Warner Entm't Co.*, 901 So. 2d 802, 810 (Fla. 2005) ("This Court has an obligation to give a statute an constitutional construction where such construction is possible."); *Fla. Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011) ("A statute's plain and ordinary meaning controls only if it does not lead to an unreasonable result.") (citing *State v. Burris*, 875 So. 2d 408, 414 (Fla. 2004)).

Here, construing section 742.13(2) to include same-sex couples who are identically situated to opposite-sex couples with respect to the purpose of the statute is reasonable and consistent with the statute's purposes of ensuring that children born to couples through assisted reproduction have a protected relationship with both intended parents, and of encouraging parents, rather than the State, to assume primary responsibility for the children they bring into the world.

In other states, courts have held that their parentage statutes must be construed to be gender-neutral when necessary to ensure equal protection of similarly situated men and women in the context of assisted reproduction. *See Shineovich & Kemp v. Shineovich*, 214 P.3d 29, 40 (Or. Ct. App. 2009) (to avoid violating requirement of equal protection, Oregon statute imposing legal parentage on a man who consents to a woman's insemination must be applied equally to a woman who does so); *J.R. v. Utah*, 261 F.Supp.2d 1268, 1294 (D. Utah 2003) (concluding that application of Utah statute deeming surrogate the legal mother

violates Fourteenth Amendment's equal protection guarantee because it allows genetic father, but not genetic mother, to be listed on birth certificate of child born to gestational surrogate); *Soos v. Superior Court in & for Cty. of Maricopa*, 897 P.2d 1356, 1362 (Ariz. Ct. App. 1994) (holding Arizona statute that permitted genetic father to prove paternity, but did not allow genetic mother to prove maternity, and instead automatically granted gestational carrier status of legal mother, violated Fourteenth Amendment's Equal Protection Clause).

Amicus urges this Court to adopt a similarly sensible, even-handed approach by holding that, to avoid constitutional concerns, section 742.13(2)'s definition of "commissioning couple" must be construed gender-neutrally to avoid disparate treatment of similarly situated men, women and same-sex couples.

C. In the Alternative, This Court Should Find That T.M.H. Is a Legal Parent Under the Common Law.

In the alternative, this Court can achieve the same result of protecting children and avoiding the serious constitutional problems created by treating similarly situated men and women differently by using its equitable power to hold that T.M.H. is a legal parent under the common law. As this Court has repeatedly held, Florida courts retain broad equitable power to determine parentage and custody for children whose circumstances fall outside of the parentage and custody statutes. *See, e.g, Kendrick v. Everheart*, 390 So. 2d 53, 61 (Fla. 1980) (courts have authority to determine parentage in circumstances not specifically contemplated in

chapter 742); *Cone v. Cone*, 62 So. 2d 907, 908 (Fla. 1953) (courts have inherent equitable jurisdiction to determine custody of minors); *Overman v. State Bd. of Control*, 62 So. 2d 696, 698 (Fla. 1952) ("Declaratory Judgments act may be invoked in any case where technical or social advances have obscured or placed in doubt one's rights, immunities, status or privileges.").

If this Court determines that the parentage statutes do not apply to the specific circumstances in this case, the Court can and should exercise its equitable jurisdiction to determine parentage where technological and societal changes have created circumstances not envisaged by the legislature. In exercising this authority, the Court should look to the principles established by the legislature for determining parentage in closely analogous cases, as described above, which look to the intentions and conduct of the parties and hold individuals accountable for their procreative choices. Based on those principles, this Court should hold that T.M.H. and other similarly situated same-sex partners are legal parents under the common law, as courts in a number of other states have already done where legislatures have not addressed the parentage of children born through assisted reproduction to unmarried opposite-sex or same-sex couples.

For example, in *In re Parentage of M.J.*, 787 N.E.2d 144 (Ill. 2003), an unmarried woman agreed to have a child through artificial insemination with her male partner, who was infertile. The male partner supported and helped raise the

child for three years. When the woman ended the relationship, she brought an action for child support. *Id*. at 146. The trial court dismissed her petition, holding that the statutes addressing artificial insemination applied only to married couples and that Illinois law did not otherwise recognize a person with no biological connection to a child as a legal parent. *Id*. at 147. The Illinois Supreme Court reversed, holding that the parentage statutes are *not* the exclusive source for assigning parental responsibility. *Id*. at 151-52. Rather, the court held that when a person has brought a child into the world by consenting to artificial insemination and has developed a parental relationship with the child, that person may be held legally accountable, even in situations where the parentage statutes do not directly apply. *Id*.

Similarly, the Washington Supreme Court held that a woman who uses donor insemination to have a child with her female partner must be given all the rights and responsibilities of a legal parent based on equitable principles. *In re Parentage of L.B.*, 122 P.3d 161, 165 (Wash. 2005) (noting that "statutes often fail to contemplate all potential scenarios which may arise in the ever changing and evolving notion of familial relations" and that courts must apply the common law to fill in the gaps); *see also King v. S.B.*, 837 N.E.2d 965 (Ind. 2005) (former domestic partner's declaratory judgment action seeking parental rights and

responsibilities with respect to a child born through artificial insemination during the relationship survived a motion to dismiss).

The First District's decisions in *Wakeman v. Dixon*, 921 So. 2d 669 (Fla. 1st DCA 2006) and *Music v. Rachford*, 654 So. 2d 1234 (Fla. 1st DCA 1995), which held that a same-sex partner of a biological parent does not have standing as a *de facto* parent to seek custody or visitation, do not address the questions presented here. Those cases did not consider whether a woman who consents to have a child through assisted reproduction is a legal parent under a gender-neutral application of section 742.13(2), the "commissioning couple" provision, or, in the alternative, under the common law as argued below. To the extent those decisions are interpreted to hold that Florida courts are not authorized to protect children under circumstances not specifically addressed in Florida statutes, they are wrong and conflict with this Court's decisions to the contrary. *See*, *e.g*, *Kendrick*, 390 So. 2d at 61; *Cone*, 62 So. 2d at 908; *Overman*, 62 So. 2d at 698.

D. This Court Should Make Clear That Its Decision Applies To Female Couples Who Use Donor Insemination To Have A Child Even If Only One Has A Biological Relationship To The Child.

Finally, if this Court determines that T.M.H. is a legal parent under a gender-neutral application of the statutes or under the common law, amicus urges this Court to make clear that its holding applies both to cases such as this one, in which a lesbian couple uses assisted reproduction to have a child where one woman is the

genetic mother and one is the birth mother, and the more common situation in which only one partner is the genetic and birth mother. Based on the statutory principles the legislature has established, it does not matter that only one partner in a commissioning couple has a biological relationship to the child. Under section 742.13(2), both partners in a commissioning couple are legal parents even if only one has a biological relationship to the child.

Amicus strongly supports the view that the relevant Supreme Court case law demonstrates that those bonds are entitled to constitutional protection regardless of whether they include a biological tie. The existence of a biological tie is not relevant to determining whether an intended parent is a legal parent under the statutory principles in chapter 742 or the principles that should guide this Court in determining whether she is a legal parent under the common law. This Court should make it clear that when two women use donated sperm to have a child together with the intention and agreement to parent the child together, and when they subsequently raise the child together, both are legal parents under Florida law, regardless of whether both have a biological connection to the child.

CONCLUSION

For the foregoing reasons, amicus curiae urges this Court to hold that T.M.H. is a legal parent of the child she and D.M.T. conceived and raised together.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

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