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**REQUEST FOR PERMISSION TO FILE AMICI BRIEF**

**Pursuant to California Rules of Court, Rules 14(c) and 29.3(c), the American Civil Liberties Union [ACLU] Foundation of Southern California, the ACLU Foundation of Northern California, the national ACLU Foundation, the Lesbian and Gay Lawyers' Association of Los Angeles, Bay Area Lawyers for Individual Freedom, and the Tom Homann Law Association request leave of this Court to file the attached brief of *amici curiae* in the above-captioned proceeding. The brief is filed in support of the respondent, Lisa R.**

**Applicants are familiar with the questions involved in the above-captioned case and the scope of their presentation, see California Rules of Court, Rule 14(c), and believe that there is a necessity for additional argument on those matters. As set forth in the attached brief, the issues presented in this case, concerning the proper interpretation of California's Uniform Parentage Act statutes in cases involving the children of same-sex couples, is of particular concern to the Applicants and falls squarely within the Applicants' area of expertise.**

**For these reasons, Applicants seek to file an *amicus* brief in support of the respondent, Lisa R., urging this Court to affirm the decision of the Superior Court and protect children's and parents' interests in the finality of parentage decrees and the evenhanded application of California's parentage laws regardless of the marital status, gender, or sexual orientation of the parents.**

## BRIEF OF AMICI CURIAE

### I. STATEMENTS OF INTEREST OF AMICI CURIAE

#### A. American Civil Liberties Union Foundation of Southern California

The American Civil Liberties Union (“ACLU”) is a national organization formed to advocate for individual rights and equal justice, and guard against abuse of government power. The ACLU of Southern California is one of the largest ACLU affiliates in the country, with over 25,000 individual members throughout central and southern California. The ACLU seeks to extend constitutional rights to groups that have historically been denied them. Specifically, the ACLU has advocated in numerous cases and *amicus* briefs for equal protection and familial privacy rights for non-traditional families, including families headed by gay and lesbian couples.

#### B. American Civil Liberties Union Foundation of Northern California

The American Civil Liberties Union of Northern California (“ACLU-NC”) is a regional affiliate of the American Civil Liberties Union, a non-profit, non-partisan membership organization dedicated

to defending the principles of liberty and individual rights embodied in the federal and state Constitutions and cognate statutes. The ACLU-NC has over 25,000 individual members in Northern California, and is one of the largest ACLU affiliates in the country. A primary concern of the ACLU-NC has been to ensure equal rights and fair treatment for minority and other vulnerable groups in our society, and we have participated in a number of cases involving the legal rights of lesbians and gay men, including their rights to raise children.

C. American Civil Liberties Union Foundation

**The American Civil Liberties Union Foundation (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with over 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws. Since its founding in 1920, the ACLU has appeared as counsel or *amicus curiae* in numerous federal and state court cases involving the legal status of lesbians and gay men. See, e.g., *Romer v. Evans*, 517 U.S. 620 (1996) (holding that Colorado’s ban on laws protecting lesbians, gay men and bisexuals from discrimination**

**violated the federal Equal Protection Clause). This experience provides the ACLU with a nuanced understanding of the role of civil rights laws in protecting all citizens from illegitimate discrimination.**

D. Lesbian and Gay Lawyers Association of Los Angeles

The Lesbian and Gay Lawyers Association of Los Angeles (“LGLA”) is an organization of over 300 lesbian, gay and bisexual attorneys in the Los Angeles area. It is an affiliate of the Los Angeles County Bar Association, and was a member of the Lobby for Individual Freedom and Equality (LIFE), the statewide lobby that, during its existence, monitored and worked for compassionate and sensible AIDS/HIV legislation and civil rights in Sacramento. LGLA has submitted and sponsored amicus briefs in many cases important to the gay and lesbian community.

E. Bay Area Lawyers for Individual Freedom (BALIF)

The Bay Area Lawyers for Individual Freedom (BALIF) is a bar association of over 500 lesbian, gay, bisexual and transgender members of the San Francisco Bay Area legal community. Since 1980,

BALIF has sought to: (1) provide a forum for the exchange of ideas and information of concern to the lesbian, gay, bisexual and transgender community; (2) discuss and take action on questions of law and the administration of justice as they affect the lesbian, gay, bisexual and transgender community; (3) encourage and support the appointment of lesbian, gay, bisexual and transgender attorneys to the judiciary, public agencies, and commissions throughout the Bay Area; and (4) promote the building of coalitions with other legal organizations to combat all forms of discrimination. As part of that mission, BALIF actively participates in public policy debates and as amicus curiae in matters affecting the rights of its members and the lesbian, gay, bisexual and transgender community at large.

F. The Tom Homann Law Association of San Diego (THLA)

The Tom Homann Law Association of San Diego (THLA) is San Diego's lesbian/gay/bisexual/transgender law association and is a California nonprofit corporation. THLA was founded in 1991 by local attorneys and has over 140 members. The membership includes attorneys, judges, legal assistants, paralegals, law students, law professors, and other individuals in law-related fields, regardless of

sexual orientation. THLA is committed to securing the basic human rights guaranteed to all citizens by the Constitution and laws of the United States and the State of California, with particular emphasis on securing the human and civil rights of lesbian, gay, bisexual, and transgendered people.

## II. INTRODUCTION

*Amici* urge this Court to deny the writ petition in this case and reaffirm the fairness and finality of California laws governing the parentage of children. First, under well-settled principles of finality, no parent should be permitted to collaterally attack a stipulated judgment of parentage to which she was a party. Second, even if this court reaches the merits of Kristine’s petition, the judgment was clearly proper under California’s Uniform Parentage Act [“UPA”] provisions governing both the parentage of children born through assisted reproductive technology, Cal. Fam. Code § 7613(a), and the presumption of parentage that arises when a parent holds out a child as his own, Cal. Fam. Code § 7611(d). Finally, these statutes must be interpreted to apply even-handedly, without regard to parents’ gender,

marital status, or sexual orientation, to be consistent with California public policy and also to avoid violating the constitutional equal protection rights of both parents and children.

### III. ARGUMENT

#### A. Kristine H. cannot collaterally attack the stipulated judgment of parentage.

**In this case, Kristine H. and Lisa R. jointly requested that the Superior Court issue a judgment declaring them to be Lauren’s legal parents, and a stipulated judgment of parentage was entered in September 2000—almost three years ago. The Superior Court clearly had subject matter jurisdiction to enter this judgment. *See* Cal. Fam. Code § 7650 (“Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship.”). It is settled law that a party to a judgment may not collaterally attack that judgment, unless the court lacked fundamental jurisdiction. *See* 2 Witkin, Cal. Procedure, Jurisdiction, § 323, at 899 (“acts merely in excess of jurisdiction, by a court having jurisdiction of the subject matter and parties, should not be subject to collateral attack**

unless exceptional circumstances precluded an earlier and more appropriate attack”); *In re Marriage of Murray*, 101 Cal. App. 4th 581, 599 (2002) (“It is the general rule that a final judgment or order is res judicata even though contrary to statute where the court has jurisdiction in the fundamental sense, *i.e.*, of the subject matter and the parties.”) (quoting *Pac. Mut. Life Ins. Co. of Cal. v. McConnell*, 44 Cal. 2d 715, 725 (1955)).

This doctrine of finality applies with particular force in the area of parentage, adoption, and child custody—even in cases in which the parties consented to a judgment that would otherwise be beyond the court’s authority. *See, e.g., In re Marriage of Hinman*, 6 Cal. App. 4th 711 (1992); *County of San Diego v. Hotz*, 168 Cal. App. 3d 605 (1985); *In re Marriage of Guardino*, 95 Cal. App. 3d 77, 86-87 (1979); *In re Adoption of Bonnor*, 260 Cal. App. 2d 17 (1968); *Peck v. Peck*, 185 Cal. App. 2d 573, 576-577 (1960). Finality and certainty are crucial in parentage determinations, which have profound effects on children’s emotional well-being and their material interests in support, inheritance, health insurance, and other benefits.

**The stipulated judgment of parentage in this case, to which Kristine H. was a party, was entered by a court of competent jurisdiction almost three years ago. This Court should apply the well-settled rule against collateral attacks on final judgments, and deny the writ petition on this basis.**

**B. The stipulated judgment of parentage in this case was proper under California's parentage laws.**

Even if this court were to reach the merits of Kristine H.'s petition, California's parentage laws, as interpreted by prior appellate cases, demonstrate the validity of the judgment of parentage in this case. The Superior Court's judgment that Lisa R. is Lauren's legal parent is proper under California Family Code § 7613(a), because she consented to a medical procedure, the donor insemination of Kristine H., with the intent of parenting the resulting child. Lisa R. is also a presumed parent under California Family Code § 7611(d), because she received Lauren into her home and held Lauren out as her own child.

Prior appellate cases have applied these statutes to non-biological parents in a variety of circumstances. *See, e.g., In re Nicholas H.*, 28 Cal. 4th 56 (2002) (holding that the statutory presumption of parenthood that applies to a man who receives a child

into his home and holds him out as his natural child is not rebutted by the man's admission that he is not the child's biological father); *Johnson v. Calvert*, 5 Cal. 4th 84 (1993) (holding that a wife who agreed to insemination of a surrogate by her husband was the legal mother of the resulting child); *In re Karen C.*, 101 Cal.App.4th 932 (2002) (holding that the *Nicholas H.* decision regarding presumptions of parenthood applies with equal force to a woman who held herself out as a child's mother); *Buzzanca v. Buzzanca*, 61 Cal. App. 4th 1410 (1998) (holding that a husband and wife who planned the insemination of a surrogate by a donor were the legal parents of the resulting child, even though neither has a biological tie to the child).

In *Johnson*, the California Supreme Court established two basic principles for interpreting California's UPA statutes. First, the Court held that a person who "intended to bring about the birth of a child that she intended to raise as her own—is the natural mother under California law." *Johnson*, 5 Cal. 4th at 93. The Court noted that persons who make use of reproductive technology to bring a child into the world are the "prime movers" of the child's birth, and "intentions that are voluntarily chosen, deliberate, express and bargained for ought

presumptively to determine legal parenthood.” *Id.* at 94 (internal citation and quotation marks omitted).

**Second, the *Johnson* Court also held that UPA provisions must be applied in a gender-neutral manner, even where the statutes are drafted in gender-specific terms: the statutory mechanisms available to establish a father and child relationship also “apply in an action to determine the existence or nonexistence of a mother and child relationship.” *Id.* at 90 (“Insofar as practicable, the provisions of this part applicable to the father and child relationship apply” to an “action to determine existence or nonexistence of mother and child relationship.”) (citing Cal. Fam. Code § 7650).**

**Following *Johnson*, the court of appeal in *Buzzanca* held that this intention-based, gender-neutral interpretation of the UPA statutes applies even if both intended parents do not have a biological relationship to the child, in “any situation in which a child would not have been born ‘but for the efforts of the intended parents’.” *Buzzanca*, 61 Cal. App. 4th at 1425 (quoting *Johnson*, 5 Cal. 4th at 94). The *Buzzanca* court also applied the statutes in a gender-neutral manner. Even though Family Code § 7613 does**

not specifically address the situation in which a woman consents to another woman's insemination, the court concluded that: "[t]he same rule which makes a husband the lawful father of a child born because of his consent to artificial insemination should be applied here . . . to the wife." *Id.* at 1412-13.

Similarly, even though § 7613(a) uses the gender-specific terms "husband" and "wife," it must be interpreted consistently with § 7650 to apply to same-sex couples who consent to medical procedures with the intention of parenting the resulting child together. *See* Section II.D, *infra* (discussing constitutional implications of denying recognition of parents based on marital status, gender, and/or sexual orientation).

Lisa is also a presumed parent under Family Code § 7611(d) because she has taken Lauren into her home and held her out as her own. Family Code § 7611(d) provides that a man is "presumed to be the natural father of a child" if "[h]e receives the child into his home and openly holds out the child as his natural child."

There is no question that section § 7611(d) applies even though Lisa R. is not biologically related to Lauren. *See Nicholas*

***H.*, 28 Cal. 4th 56 (applying § 7611(d) presumption to man who held a child out as his own despite his acknowledgment that he was not the child’s biological father). Similarly, this Court has held that § 7611 applies to women as well as men, even though it is drafted in gender-specific terms. See *Karen C.*, 101 Cal App. 4th at 939 (“Section 7611, read in conjunction with section 7650, means that a woman is presumed to be the natural mother of a child if she receives the child into her home and openly holds out the child as her natural child . . .”).**

**In this case, Lisa received Lauren into her home from the time of her birth, and held Lauren out as her own child to her extended family and friends and to the community—and most importantly, to Lauren herself. Thus, the stipulated judgment of parentage in this case was proper under the intention-based and gender-neutral interpretations of §§ 7613(a) and 7611(d) articulated in the case law.<sup>1</sup> C. Interpreting the**

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<sup>1</sup>

*Johnson, Buzzanca, Nicholas H.*, and *Karen C.* also undercut the reasoning of earlier cases in which the courts, without extensive analysis, concluded that the UPA did not confer parental status on lesbian co-parents who were not the children’s “natural” mothers, *Nancy S. v. Michele G.*, 228 Cal. App. 3d 831, 836 (1991) (“It is undisputed that appellant is not the natural mother” so “appellant could not establish the existence of a parent-child relationship under the [UPA].”); *Curiale v. Reagan*, 222 Cal. App. 3d 1597, 1599-1600 (1990) (UPA “has no application where, as here, it is undisputed defendant is the natural mother of the child”); *West v. Superior Court*, 59 Cal. App. 4th 302, 306 (1997) (following *Curiale*). None of these three cases squarely presented the issue whether a non-biological

UPA to apply even-handedly regardless of parents' gender, marital status, and sexual orientation is consistent with California public policy.

**The applicable statutes and case law must be interpreted in light of the public policies expressed in the UPA statutes themselves, and in other California statutes relating to gender, marital status, and sexual orientation.**

**The UPA itself mandates equal treatment of children regardless of their parents' marital status.** *See* Cal. Fam. Code § 7602 (“The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parents). Indeed, one of the primary purposes of the Uniform Parentage Act was to eliminate unequal treatment of children born to unmarried parents. This public policy is consistent with other state statutes prohibiting marital status discrimination in a variety of arenas. *See, e.g.,* Cal.

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mother could be a legal parent under the UPA statutes at issue here. Moreover, the courts' analysis in these decisions does not appear to have even contemplated the possibility that a child could have more than one legal mother.

Gov't Code §§ 12940, 12955 (prohibiting marital status discrimination in employment and housing); Cal. Welf. & Inst. Code § 18907 (prohibiting marital status discrimination in determining eligibility for food stamps).

The UPA also explicitly mandates that its provisions be applied in a gender-neutral way whenever practicable. *See* Cal. Fam. Code § 7650. Again, this is consistent with the public policy expressed in other statutes mandating gender neutrality in family law matters. *See, e.g.,* Cal. Fam. Code § 3040 (providing that courts making child custody orders “shall not prefer a parent as custodian because of that parent’s sex”).

The UPA statutes and case law should also be interpreted in light of California's numerous statutes prohibiting discrimination on the basis of sexual orientation in various contexts. *See, e.g.,* Cal. Educ. Code §§ 200-20 (prohibiting discrimination on basis of sexual orientation and gender identity in public schools); Cal. Govt. Code §§ 12940, 12955 (prohibiting sexual orientation discrimination in employment and housing).

Moreover, California now has specific statutes providing for

legal recognition of same-sex domestic partnerships, Cal. Fam. Code §§ 297-299, and granting such partners some of the key legal rights of spouses, *see, e.g.*, Cal. Probate Code § 6401 (providing that domestic partners have the same rights as spouses regarding intestate succession); Cal. Code Civ. Proc. § 377.60 (providing that domestic partners can recover damages for the wrongful death of a partner); Cal. Health & Safety Code § 1261 (regarding hospital visitation rights of domestic partners); Cal. Govt. Code §§ 22868-77 (regarding health care and other benefits eligibility of public employees' domestic partners).<sup>2</sup> Most significantly, recent legislation allows domestic partners to adopt each others' children using the same stepparent adoption procedures available to spouses. *See* Cal. Fam. Code § 9000(b). The enactment of this statute clearly demonstrates that it is permissible under California law for a child to have two legal parents of the same sex.<sup>3</sup>

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<sup>2</sup>

Moreover, currently pending legislation would expand the legal rights and responsibilities of domestic partners so as to achieve substantial parity with those of married couples. *See* Assembly Bill 205.

<sup>3</sup>

As discussed in footnote 1, *supra*, the reasoning of early cases such as *Nancy S.* and *Curiale* in which the courts hastily dismissed lesbian

D. The Uniform Parentage Act, and the rules governing finality of parentage decrees, must be interpreted so as to avoid violating parents' and children's rights under the federal and state Constitutions.

The trial court's denial of Kristine H.'s motion to set aside the stipulated judgment of parentage not only was correct under the applicable statutes and case law, but a contrary ruling would violate Lisa R.'s federal and state constitutional rights, and would independently violate the constitutional rights of her child, Lauren, on the basis of Lisa R.'s gender, marital status, and sexual orientation. Whenever possible, statutes must be construed to avoid constitutional problems. *See Almendarez-Torres v. United States* (1998) 523 U.S. 224, 237-38 (quoting *United States v. Jin Fuey Moy* (1916) 241 U.S. 394, 401). For this reason as well, this court should affirm the denial of Kristine H.'s motion.

In every other context, California courts have strictly and consistently applied the general rules governing finality of civil

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partners' parentage claims has been undercut by more recent developments in the law. It is now clear that California law allows a child to have more than one legal mother.

judgments to protect decrees of parentage from collateral attack. See Section II.A, *supra*. If this Court were to make an exception and allow Kristene H. to challenge the validity of the stipulated judgment of parentage in this case, because of the gender, marital status, or sexual orientation of the parties to that judgment, such an unequal application of the general rules governing finality of judgments would raise serious equal protection issues. Moreover, on the merits, any interpretation of the UPA statutes that would deny legal recognition to Lisa and Lauren’s parent-child relationship would also raise serious equal protection concerns.

Classifications that discriminate on the basis of illegitimacy – i.e., the marital status of a child’s parents – are subject to heightened scrutiny under the federal Equal Protection Clause. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001) (**holding that if a statute or policy “employs a quasi-suspect class, such as gender or illegitimacy, then courts must apply ‘intermediate’ scrutiny and ask whether the statute is substantially related to an important governmental interest”**) (citing *United States v. Va.*, 518 U.S. 515, 567-68 (1996)).

The U.S. Supreme Court has consistently struck down as

unconstitutional state laws that burden or disadvantage children born out of wedlock. As the Court explained in *Pickett v. Brown*, 462 U.S. 1 (1983):

[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.

Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as unjust—way of deterring the parent ... the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where—as in this case—the classification is justified by no legitimate state interest, compelling or otherwise.

*Id.* at 7; see also *Gomez v. Perez*, 409 U.S. 535, 538 (1973) (“a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally”).

Therefore, under well-established federal law, California’s UPA statutes cannot be interpreted to deny children born to unmarried couples the benefit of having both of their intended parents recognized as legal parents under §§ 7613(a) and 7611(d), without violating these

children's constitutional rights to equal protection.

Moreover, denying legal recognition of Lisa and Lauren's parent-child relationship, while a man and his child in identical circumstances would have a legal relationship under §§ 7613(a) and/or 7611(d), would constitute gender discrimination in violation of Lisa's and Lauren's constitutional right to equal protection. Gender classifications not only are subject to heightened scrutiny under the federal Equal Protection Clause, see *Ball*, 254 F.3d at 823, but are subject to strict scrutiny under the California Constitution. *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 95 Cal.Rptr. 329; see also *Warden v. State Bar* (1999) 21 Cal.4th 628, 643 n.8, 88 Cal.Rptr.2d 283 (citing *Sail'er Inn*).

Finally, even if such an interpretation of the UPA statutes were analyzed as a classification based exclusively on sexual orientation rather than gender or marital status, it still would not withstand an equal protection challenge. Classifications based on sexual orientation are subjected, at a minimum, to "active" rational basis scrutiny under the federal Constitution, which requires courts to strike down such

classifications if they are arbitrary or intended merely to harm a politically unpopular group. *See Romer v. Evans*, 517 U.S. 620, 632-33 (1996); *Heller v. Doe*, 509 U.S. 312, 321 (1993); *Lawrence v. Texas*, \_\_\_ U.S. \_\_\_, 123 S.Ct. 2472, 2484 (2003) (O'Connor, J., concurring). The California courts have also, in effect, applied heightened scrutiny in challenges to classifications based on sexual orientation under the state Constitution. *See, e.g., Gay Law Students Association v. Pacific Telephone & Telegraph Co.* (1979) 24 Cal.3d 458, 156 Cal.Rptr. 14 (discrimination in state employment); *Baluyut v. Superior Court of Santa Clara County* (1996) 12 Cal.4th 826 (discriminatory enforcement of lewd conduct laws); *Holmes v. California National Guard* (2001) 90 Cal.App.4th 297, 109 Cal.Rptr. 2d 154 (discrimination in state military positions); *People v. Garcia* (2000) 77 Cal.App.4th 1269, 92 Cal.Rptr.2d 339 (exclusion from juries); *see also Children's Hosp. v. Belshe*, 97 Cal.App.4th 740, 769, 118 Cal.Rptr. 2d 629, 650 (2002) ("where ... differential treatment ... does not relate to any ... *suspect classification, such as race or sexual orientation*, the question is whether there is a rational basis ...") (emphasis added). There is no rational basis—much less any

justification that would survive heightened scrutiny--for denying Lauren the benefits of legal parentage, or failing to recognize the actual, existing parent-child relationship between Lauren and Lisa, because of her parents' sexual orientation

Moreover, a statute that unequally burdens the exercise of a fundamental right is subject to strict scrutiny. *See, e.g., Saenz v. Roe*, 526 U.S. 489, 499 (1999) (classifications that penalize the exercise of a fundamental right violate the Equal Protection Clause “unless shown to be necessary to promote a compelling governmental interest”). The U.S. Supreme Court and the California Supreme Court have long recognized that the parent-child relationship is constitutionally protected and implicates fundamental rights. *See Stanley v. Illinois*, 405 U.S. 645 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Troxel v. Granville*, 530 U.S. 57 (2000); *In re B.G.*, 11 Cal. 3d 679 (1974); *In re Jasmon O.*, 8 Cal. 4th 398 (1994). This constitutional protection is not limited to biological or adoptive parenthood, but applies whenever an actual parental relationship exists. *See, e.g., Prince v. Mass.*, 321 U.S. 158 (1944) (constitutional protection of “private realm of family life”

extends to relationship between niece and aunt who raised her); *Moore v. City of East Cleveland*, 431 U.S. 494, 503-505 (1977) (due process clause protected the relationship between a grandmother and two grandsons; constitutional protection for family ties “is by no means ... limited to ... the nuclear family”); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (protecting child's relationship with non-biological father who raised her); *Troxel*, 120 S.Ct. 2054 at 2059 (plurality opinion) (parent-child relationships are constitutionally protected, and these relationships may extend beyond biological and adoptive parenthood); *In re B.G.*, 11 Cal.3d at 692 ( “biological parenthood ... is not a essential condition” for the existence of a constitutionally protected parent-child relationship).

Certainly there is no compelling governmental interest in refusing to recognize a parent-child relationship based solely on the parent’s sex, marital status, or sexual orientation, especially in light of the Supreme Court’s recent statement in *Lawrence* that **“equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are**

**linked in important respects,” and that “our laws and tradition afford constitutional protection to personal decisions relating to ... family relationships, child rearing and education. . . . Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.” See *Lawrence*, 123 S.Ct. at 2482, 2484.**

Regardless of which level of scrutiny applies, under *any* form of equal protection analysis, an interpretation of California’s parentage laws that denies legal recognition to Lisa R.’s and Lauren’s parent-child relationship would be unconstitutional. It would be patently irrational to recognize as legal parents: (1) a wife who consents to insemination of a gestational surrogate by her husband, as in *Johnson*; (2) a husband and wife who consent to the insemination of a gestational surrogate by a donor, as in *Buzzanca*; (3) a man who holds himself out as a child’s father, but is neither married to the child’s mother nor biologically related to the child, as in *Nicholas H.*; and (4) a woman who holds herself out as a child’s mother but is neither married to the child’s father nor biologically related to the child, as in *Karen C.* – but to deny legal parentage to a lesbian who consents to the insemination of her domestic partner by a donor and

holds herself out as the child's mother. There is simply no rational basis for denying legal recognition as parents to two persons who jointly bring about the birth of a child through assisted reproductive technology, with the intention to act as parents, and who actually function as parents and hold themselves out as parents to the child, to their extended families and to the community.

#### IV. CONCLUSION

For the reasons discussed above, *amici* urge this Court to deny the writ petition, and – if it reaches the merits at all – to hold that the stipulated judgment of parentage in this case was proper under Cal. Family Code §§ 7613(a) and 7611(d), and that these statutes should be interpreted to apply evenhandedly without regard to the gender, marital status or sexual orientation of a child's parents.