Case No. S138169

IN THE SUPREME COURT OF CALIFORNIA

Adoption of JOSHUA S., a Minor.

ANNETTE F.,
Plaintiff and Respondent,

vs.

SHARON S.,
Defendant and Appellant.

After a Decision of the Court of Appeal, Fourth Appellate District,
Division One, Case No. D045067;
On Appeal from an Order Of the Superior Court of San Diego,
Case No. A46053 (Hon. Cynthia A. Bashant, Judge)

APPLICATION OF AMERICAN CIVIL LIBERTIES UNION, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, LEGAL SERVICES FOR CHILDREN, WESTERN CENTER ON LAW & POVERTY, THE YOUTH LAW CENTER, AND PROTECTION & ADVOCACY, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF; APPLICANTS' STATEMENTS OF INTEREST; AMICUS CURIAE BRIEF

Andrea G. Asaro, State Bar No. 107039
Amy Whelan, State Bar No. 215675
ROSEN, BIEN & ASARO, LLP
155 Montgomery Street, 8th Floor
San Francisco, CA 94104
Tel: 415-433-6830

Attorneys For Amici Curiae The American Civil Liberties Union, Bay Area Lawyers For Individual Freedom, Legal Services For Children, Western Center On Law & Poverty, The Youth Law Center, And Protection & Advocacy, Inc. In Support Of Plaintiff And Respondent Annette F.

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To the Honorable Ronald M. George, Chief Justice, and the Honorable Associate Justices of the California Supreme Court:

The American Civil Liberties Union of San Diego & Imperial Counties, the American Civil Liberties Union of Northern California (ACLU), the American Civil Liberties Union of Southern California, Bay Area Lawyers for Individual Freedom (BALIF), Legal Services for Children (LSC), the Western Center on Law & Poverty (WCLP), the Youth Law Center (YLC) and Protection & Advocacy, Inc. (PAI) submit this

application for leave to file an amicus curiae brief in support of Plaintiff and Respondent Annette F.

APPLICANTS' STATEMENTS OF INTEREST

1. The American Civil Liberties Union (ACLU)

The American Civil Liberties Union of San Diego & Imperial Counties, the American Civil Liberties Union of Northern California, and the American Civil Liberties Union of Southern California are regional affiliates of the American Civil Liberties Union (ACLU), a nationwide, nonprofit nonpartisan membership organization dedicated to the defense and promotion of the guarantees of individual liberties secured by the federal and state constitutions. The ACLU has a strong interest in protecting the right and ability of individuals to enforce important public policies through private attorney general actions, an interest served by the full implementation of public-interest fee shifting statutes such as California Code of Civil Procedure section 1021.5. The capacity of the ACLU to engage in civil rights and civil liberties litigation is in part dependent on such statutes, for attorney's fee award comprise a significant source of funds which (along with foundation grants, membership dues, and individual donations) enables the organization to carry out its litigation program.

2. Bay Area Lawyers for Individual Freedom (BALIF)

Bay Area Lawyers for Individual Freedom (BALIF) is the nation's oldest and largest bar association of Lesbians, Gay Men, Bisexuals, and Transgendered (LGBT) Persons in the field of law. BALIF serves to take action on questions of law and justice that affect the LGBT community; to strengthen professional and social ties among LGBT members of the legal profession; to build coalitions with other legal organizations to combat all forms of discrimination; to promote the appointment of LGBT attorneys to the judiciary, public agencies and commissions in the Bay Area; and to provide a forum for the exchange of ideas and information of concern to members of the LGBT legal community.

3. Legal Services for Children (LSC)

Legal Services for Children (LSC) was founded in 1975 as the first non-profit law firm established to provide free direct legal and social services to children and youth. LSC represents youth in dependency, guardianship, school expulsion, immigration and other cases. LSC uses attorney-social worker teams to assist at-risk youth in the Bay Area who need to access the legal system to stabilize or improve their lives. LSC's mission is to empower youth by increasing their active participation in making decisions about their own lives. LSC has a strong interest in public interest litigation that advances the rights of children and families. The

availability of attorney fees under California Code of Civil Procedure section 1021.5 is essential to the fulfillment of that interest.

4. **Western Center On Law & Poverty (WCLP)**

Western Center on Law & Poverty (WCLP) opened its doors in 1967 and since that time has been working to ensure fairness and access to justice for low-income individuals. WCLP educates, advocates and litigates on health, housing, family and public benefits issues on behalf of low-income Californians. WCLP responds to thousands of calls every year for advice or information from community-based advocates, legal services and pro bono lawyers, health clinics, government officials and the media. Because of its focus on public interest litigation and advocacy, WCLP has been at the forefront of public interest fee shifting litigation, including its work as co-counsel in *Serrano v. Priest* (1977) 20 Cal.3d 25. In that case, this Court adopted the private attorney general doctrine, a principle that is now codified in Code of Civil Procedure section 1021.5.

5. **The Youth Law Center (YLC)**

The Youth Law Center (YLC) is a non-profit, public interest law office that has, since 1978, worked to protect abused and at-risk children, focusing particularly on the problems of children living apart from their families in child welfare and juvenile justice systems. The Youth Law Center advocates to protect the rights of children in state care and to ensure that children receive the services and support they need to develop to their

full potential. Over the course of its history, the Youth Law Center has brought about extensive changes and improvements in conditions and services for hundreds of thousands of children throughout the country. The Youth Law Center has a strong interest in protecting and enforcing the civil rights of its members and of the community it serves. The availability of attorney fees under California Code of Civil Procedure section 1021.5 is essential to the fulfillment of these goals.

6. **Protection & Advocacy, Inc. (PAI)**

Protection & Advocacy, Inc. (PAI) is a private non-profit agency established under federal law to protect, advocate for and advance the human, legal and service rights of Californians with disabilities. PAI works in partnership with people with all categories of disability (sensory, physical, medical, learning, cognitive, emotional and psychiatric) striving towards a society which values all people and supports their rights to dignity, freedom, choice and quality of life. Since 1977 PAI has provided essential legal services to people with disabilities in areas including public benefits, housing, employment, special education, community integration, access to mental health services and health care. PAI's clients are primarily indigent, traditionally underserved, and experience significant barriers in accessing the courts to enforce their rights. The availability of attorney fees under California Code of Civil Procedure section 1021.5 is essential for

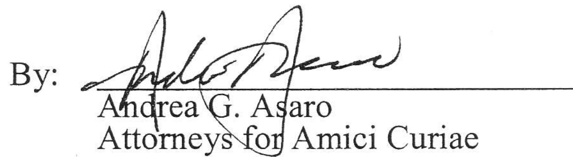
PAI to continue to provide vital legal services to people with disabilities throughout the state.

The Applicants and their attorneys are familiar with the issues before the California Supreme Court regarding California Code of Civil Procedure section 1021.5 and with the issue of attorney fees generally. Applicants believe their brief will assist the Court in deciding the issues before it.

Respectfully submitted,

Dated: May 3, 2006

ROSEN, BIEN & ASARO, LLP

By: 

Andrea G. Asaro
Attorneys for Amici Curiae

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AMICUS CURIAE BRIEF

INTRODUCTION

At issue is whether a party's non-pecuniary interest can disqualify her attorney from recovering fees otherwise warranted under Code of Civil Procedure section 1021.5.[1] As amici explain, the answer is no.

Denying fees under Section 1021.5 solely on the grounds that the prevailing plaintiff's non-pecuniary interest was "strong," "objectively ascertainable" and "palpable" contravenes the very purpose of Section

[1] Code of Civil Procedure section 1021.5 provides that a court may award attorneys' fees to a prevailing party in a case that has "resulted in the enforcement of an important right affecting the public interest if : (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

1021.5, which is to encourage meritorious public interest litigation by providing an incentive to counsel to take on such actions, and is inherently arbitrary, inequitable and unworkable.

ARGUMENT

I. The Court of Appeal's Opinion Contravenes The Fundamental Purpose Of Section 1021.5, Which Is To Encourage Skilled Attorneys To Take Meritorious Public Interest Cases

Plaintiff Annette F., through counsel, vindicated the statutory right of second-parent adoption, successfully resisting her former domestic partner's zealous attempts to invalidate the adoption. (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417.) Without disturbing the trial court's finding that Annette's counsel took this case "purely because he was concerned about vindicating a right important to the general public," the Court of Appeal concluded counsel's "reasons for and expectations in representing Annette" were "irrelevant," because Annette's non-pecuniary motivation in pursuing the litigation precluded an award of fees as a matter of law. (*In re Joshua S.* (2005) 33 Cal.Rptr.3d 776, 778, 781, review granted December 14, 2005, D045067, citing *Punsly v. Manwah Ho* (2003) 105 Cal.App.4th 102 and *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors* (2000) 79 Cal.App.4th 505, 514.)

The Court of Appeal's analysis misses the point. While a particular attorney's personal motivation in deciding whether to take on a meritorious public interest case on a contingency fee basis may not be legally relevant to the decision whether a fee award is appropriate, the availability of attorney fees under Section 1021.5 as an incentive to encouraging skilled lawyers to take on such cases is relevant. Allowing a party's non-pecuniary interest to defeat an attorney's expectation of obtaining a fully compensatory fees award in a case in which Section 1021.5 fees are otherwise appropriate will discourage precisely the sort of meritorious public interest litigation Section 1021.5 was intended to reward.

This Court has repeatedly made clear that the purpose of Section 1021.5 is to encourage skilled lawyers to pursue meritorious public interest litigation, by assuring them they will be fully and fairly compensated if they prevail:

> [T]he fundamental objective of the private attorney general doctrine of attorney fees is "to encourage suits effectuating a strong [public] policy by awarding substantial attorney's fees . . . to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens." (Citation.)

(*Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933 [citizens' group entitled to §1021.5 fees for successfully challenging subdivision map as inconsistent with general plan], quoting *Serrano v. Priest* (1977) 20 Cal.3d 25, 43 [public interest attorneys entitled to §1021.5 fees for successfully challenging public school

financing on equal protection grounds]; see also *Maria P. v.* Riles (1987) 43 Cal.3d 1281 [§1021.5 fees properly awarded where counsel obtained injunction protecting school children from disclosure of immigration status to INS]; *Bouvia v. County of Los Angeles* (1987) 195 Cal.App.3d 1075, 1082-1083 [right to refuse life-sustaining medical treatment].)

The focus of Section 1021.5 is pragmatic and realistic – private litigants will not be able to pursue meritorious public interest cases if, as a practical matter, they cannot find lawyers to represent them:

> The [private attorney general] doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. (Citations.)

(*Woodland Hills*, *supra*, 23 Cal.3d at p. 933; see also *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 ["Citizens of ordinary means are unlikely to file, and competent private practitioners are unlikely to accept, public interest litigation, however meritorious, without some assurance of compensation that fairly covers the legal services required."])

Consistent with the focus on motivating counsel to take cases in the public interest, this Court acknowledged over 20 years ago that Section 1021.5 fee awards "are properly made to plaintiffs' attorneys rather than to plaintiffs themselves." (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 682, fn. 26 [action brought by legal aid organization

on behalf of elderly and disabled, challenging allocation of transportation funds].) This is so regardless of whether the plaintiffs' counsel are in private practice (see, e.g., *Flannery v. Prentice* (2001) 26 Cal.4th 577), or are employed by non-profit public interest organizations (*Press v. Lucky Stores* (1983) 34 Cal.3d 311; *Schmidt v. Lovette* (1984) 154 Cal.App.3d 466; *Folsom v. Butte County Assn. of Governments, supra*, 32 Cal. 3d 668; *Bouvia v. County of Los Angeles, supra,* 195 Cal.App.3d at pp. 1082-1083):

> Because the basic rationale underlying the "private attorney general" theory which we here adopt seeks to encourage the presentation of meritorious constitutional claims affecting large numbers of people, and because in many cases the only attorneys equipped to present such claims are those in funded "public interest" law firms, a denial of the benefits of the rule to such attorneys would be essentially inconsistent with the rule itself.

(*Serrano v. Priest*, *supra*, 20 Cal. 3d at p. 48 [citations omitted].)

Where, as here, the party's interest is entirely non-pecuniary, such that there is no prospect of a monetary award from which an attorney might recover a contingent fee, the problem of securing legal representation is all the more acute. (See Dept. of Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 1310 prepared for Governor Brown (Sept. 1977), pp. 2-3 ["[T]he cases covered by AB 1310 often result in *non-pecuniary or intangible recoveries*, thus precluding the possibility of a contingency fee

arrangement."])[2] Thus, it is precisely when the party's interest is non-pecuniary that fees awards under Section 1021.5 are most appropriate, for the "financial burden" of the litigation cannot be offset by a monetary recovery or other economic gain.

This Court has recognized the importance of ensuring the enforcement of non-pecuniary but fundamental rights by compensating the attorneys who succeed in doing so. In *Press v. Lucky Stores, supra,* 34 Cal.3d 311, this Court found that plaintiffs' counsel were entitled to fees for successfully obtaining an injunction prohibiting a supermarket owner from denying plaintiffs access to the premises to gather signatures for a ballot initiative. The Court stressed the importance of enforcing such intangible rights as freedom of speech, noting that vindicating the personal interest of the speaker benefits the public at large:

> Lawsuits enforcing the right to speak freely or to petition the government for redress of grievances frequently arise when a single person or a small group is prohibited from speaking about a particular subject or at a particular place. Yet the rights that are vindicated inure to all persons and strengthen our democratic institutions as a whole.

(*Id.*, at pp. 323-324.) The Court concluded plaintiffs had satisfied the "necessity and financial burden" factor of Section 1021.5 precisely *because* their interest was not pecuniary: "*Since* plaintiffs had no pecuniary interest

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[2] See "Annette F.'s Second Request For Judicial Notice," filed January 13, 2006, Attachment 2; "Rule 28(g) letter brief of *amici curiae* and request for judicial notice," filed November 8, 2005, Tab 3.

in the outcome of the litigation, 'the financial burden in this case [was] such that an attorney fee award [was] appropriate in order to assure the effectuation of an important public policy.'" (*Id.,* at p. 321, quoting *Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles, supra*, 23 Cal.3d at p. 942; emphasis supplied.)

The Court in *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, properly relied on *Press* for the proposition that Section 1021.5's "financial burden" factor is satisfied when the prevailing plaintiff's interest is non-pecuniary:

> [T]he Supreme Court [in *Press*] stated that because plaintiff had no pecuniary interest in the result of the litigation, the financial burden was such that a fee award was appropriate to insure the effectuation of the people's fundamental rights of free expression and petition. (Citation.) The Court acknowledged that plaintiffs had personal interests in the outcome of the initiative sufficient to induce them to bring the action, but considered that fact irrelevant.

(*Washburn v. City of Berkeley*, *supra*, 195 Cal.App.3d at p. 585 [mandamus action challenging false and misleading ballot argument], citing *Press, supra,* 34 Cal.3d at pp. 318-321.) Thus the fact that the right vindicated here – the statutory right to second parent adoption – is non-pecuniary is precisely why the "financial burden" requirement of Section 1021.5 is satisfied.

II. The Availability Of Attorney Fees Under Section 1021.5 Makes Vital Public Interest Litigation Feasible In Many Legal Fields

As this Court has recognized, Section 1021.5 attorney fees awards are appropriate in a variety of public interest cases in which the plaintiff's stake is non-pecuniary. (*Woodland Hills Residents Assn., Inc., supra*, 23 Cal. 3d at p. 936 [noting that private attorney general doctrine "may find proper application in litigation involving, for example, racial discrimination, the rights of mental patients, legislative reapportionment and . . . environmental protection"].) Section 1021.5 attorney fees have in fact been awarded in cases involving:

- Education: *Maria P. v. Riles, supra,* 43 Cal.3d at p. 1293 (taxpayer action vindicating the right of immigrant school children to "equal educational opportunities"); *Serrano v. Priest* (1976) 18 Cal.3d 728 (successful equal protection challenge to public school financing); *Phipps v. Saddleback Valley Unified School District* (1988) 204 Cal.App.3d 1110 (action by hemophiliac student with HIV/AIDS securing right to attend classes); and *Slayton v. Pomona Unified School District* (1984) 161 Cal.App.3d 538 (mandamus proceeding challenging student suspension, corporal punishment and other disciplinary proceedings).

- Environmental Protection: *Protect Our Waters v. County of Merced* (2005) 130 Cal.App.4th 488 (CEQA action to set aside surface mining permit); *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810 (action securing public easement for recreational use); and *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187 (mandamus action by conservation group regarding maintenance of stream flows sufficient to protect fish).
- Public transportation: *Folsom v. Butte County Assn. of Governments, supra,* 32 Cal.3d 668 (taxpayer action securing transportation for the elderly and disabled).
- Elections: *Washburn v. City of Berkeley, supra*, 195 Cal. App.3d 578 (mandamus action challenging false and misleading ballot argument); *Wal-Mart Real Estate Business Trust v. City Council of City of San Marcos* (2005) 132 Cal.App.4th 614 (vindication of referendum to block large retailer from building second store).
- Religious freedom: *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448 (vindication of right to be exempt from assignment to nuclear power plant, as accommodation of religious beliefs).

- Right to privacy: *Edgerton v. State Personnel Bd.* (2000) 83 Cal.App.4th 1350 (successful challenge to Caltrans off-duty drug testing practices); *Bouvia v. County of Los Angeles, supra,* 195 Cal.App.3d 1075 (right to refuse life-sustaining medical treatment); *Planned Parenthood Shasta Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009 (injunction creating buffer zone limiting anti-abortion protesters' access to clinic patients); *Planned Parenthood v. Aakhus* (1993) 14 Cal.App.4th 162 (injunction against anti-abortion protesters' trespassing and other actions); *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852 (successful challenge to enforcement of restrictions on public funding of abortions).
- Freedom of speech: *Press v. Lucky Stores, supra,* 34 Cal.3d 311 (vindication of right to gather signatures for ballot measure); *Bright v. Los Angeles Unified School District* (1976) 18 Cal.3d 450 (challenge to restrictions on publication and distribution of underground school newspaper).
- Other Civil Rights: *Schmidt v. Lovette, supra,* 154 Cal.App.3d 466 (successful challenge to requirement that teachers subscribe to loyalty oath); *Olney v. Municipal Court*

(1982) 133 Cal.App.3d 455 (vindication of statutory right not to be present at misdemeanor sentencing).

If attorney fees had not been available under Section 1021.5 in these cases, where the parties' interests were non-pecuniary, the cases likely would not have been brought. Most private individuals cannot afford to pay an attorney on an hourly rate basis; their only hope is to find counsel willing to assume the risk inherent in public interest litigation, with the expectation of being compensated for success. Non-profit legal services organizations have limited resources, and they typically rely at least in part on attorney fees awards to finance their efforts. (See Applicants' Statements of Interest, *ante.)* In the real world, it is the prospect of an award of attorney fees under Section 1021.5 that makes meritorious public interest litigation feasible. (*Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles, supra.* 23 Cal.3d at p. 933.)

III. There Is No Workable, Rational Standard For Determining Which Non-Pecuniary Interests Should Defeat Section 1021.5 Attorney Fees Awards.

It is no answer to say that only those non-pecuniary interests that are "strong," "objectively ascertainable" and "palpable," like Annette's interest in adopting her child, should defeat a fees award. (*In re Joshua S., supra*, 33 Cal.Rptr.3d at 779-782.) First, as a practical matter, the strength of a non-pecuniary interest does not make litigation more affordable. Annette's

financial means were what they were; the fact that Joshua's adoption was at stake, rather than, say, her right to solicit signatures in support of second-parent adoption legislation, did not make her a wealthier woman. The "financial burden" of litigation bears no relationship to the magnitude of the non-pecuniary interest.

Second, attorneys are risk averse. They are not inclined to gamble on whether a court, at the end of day, will deem their clients' non-pecuniary interest so great as to defeat a fee award that otherwise meets the criteria of Section 1021.5. How could the attorney gauge at the outset whether the interest was sufficiently personal to confer standing, yet not of such "immense personal consequence" as to defeat a fee award? (*In re Joshua S.*, *supra*, 33 Cal.Rptr.3d at 781.) And it is counsel's assessment at the *outset* of the case that is key:

> [I]n comparing the cost of litigation to the plaintiffs' stake in the matter, we do not look at the plaintiffs' *actual* recovery after trial, but instead we consider "the *estimated value* of the case at the time the vital litigation decisions were being made . . . ." (Citation.) In other words, the inquiry looks forward from the outset of counsel's vital litigation decisions, rather than backward after judgment. This is because the purpose of section 11021.5 is to encourage public interest litigation by offering the "bounty" of a court-ordered fee (citation), and the focus of that incentive is on the point in time when vital litigation decisions are being considered.

(*Beasley v. Wells Fargo Bank, N.A.* (1991) 235 Cal.App.3d 1407, 1414, quoting *Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1 at pp. 9-10; emphasis in original.)

Third, as the Court of Appeal acknowledged in *Hammond v. Agran* (2002) 99 Cal.App.4th 115, denying attorney fees based on the strength of a plaintiff's non-pecuniary interest is nonsensical: "Paradoxically, the less direct or concrete a personal interest someone has, the more likely he or she will satisfy the [financial burden] element and be eligible for fees under the statute. Thus, in practice, the necessity and financial burden element of section 1021.5 tends to be analyzed like golf is scored: the lower the better." (*Id.*, at p. 122.) Application of this "golf score" approach would mean that counsel representing a woman who merely sought to gather signatures in support of an initiative vindicating second parent adoptions would be entitled to fees, under *Press*, if they secured her right to access public premises, while an attorney whose client had been denied complete access to her child would not. More than paradoxical, this result is also untenable.

Finally, if certain non-pecuniary interests could defeat Section 1021.5 fee awards, depending on their strength or concreteness, courts themselves would be forced to make difficult and potentially arbitrary distinctions. How does a desperately ill patient's right to refuse life-sustaining treatment, or a public employee's right not to be subjected to off-duty drug testing, or the right of a child with HIV/AIDS to attend school, or a woman's right to seek an abortion without fear of hostile confrontation, compare with a woman's right to adopt a child? All that these cases have in common is

that the interest at stake is non-pecuniary. When these rights are vindicated, there are no monetary awards to defray the expense of litigation. The "financial burden" necessarily makes an award of attorney fees under Section 1021.5 appropriate in these cases, where the other statutory requirements are met.

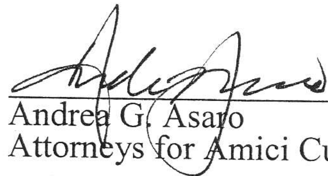
CONCLUSION

For the foregoing reasons, amici curiae respectfully request that this Court reverse the decision of the Court of Appeal with respect to the issues raised in Annette's petition.

Respectfully submitted,

Dated: May 3, 2006

ROSEN, BIEN & ASARO, LLP

By 

Andrea G. Asaro
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

I, Andrea G. Asaro, attorney for amici curiae in support of Plaintiff and Respondent Annette F., certify that the foregoing Amicus Curiae Brief is prepared in proportionally spaced Times New Roman 13 point type and, based on the word count of the word processing system used to prepare the brief, that the brief is 2,907 words long.

Andrea G. Asaro

PROOF OF SERVICE

Annette F. v. Sharon S. (Adoption of Joshua S.)
Supreme Court of California, Case No. S138169
Court of Appeal, Case No. D045067
Superior Court of California, Case No. A46053

I am over eighteen (18) years of age and reside in the County of San Francisco. I am not a party to this action. I am employed in the County of San Francisco, California, and my office address is 155 Montgomery Street, 8th Floor, San Francisco, CA 94104.

On May 3, 2006, I served a true copy of the following document:

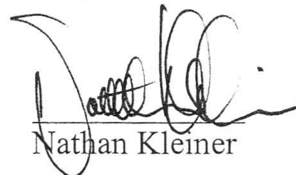
APPLICATION OF AMERICAN CIVIL LIBERTIES UNION, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, LEGAL SERVICES FOR CHILDREN, WESTERN CENTER ON LAW & POVERTY, THE YOUTH LAW CENTER, AND PROTECTION & ADVOCACY, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF; APPLICANTS' STATEMENTS OF INTEREST; AMICUS CURIAE BRIEF

By:

[X] **U.S. MAIL:** I placed a copy in a separate envelope, with postage fully prepaid, for each address named on the attached service list for collection and mailing on the below indicated day following the ordinary business practices at Rosen, Bien & Asaro LLP. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit addressed as indicated on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of May, 2006, at San Francisco, California.



Nathan Kleiner

SERVICE LIST

Annette F. v. Sharon S. (Adoption of Joshua S.)
Supreme Court of California, Case No. S138169
Court of Appeal, Case No. D045067
Superior Court of California, Case No. A46053

Charles A. Bird, Esq.
Luce, Forward, Hamilton & Scripps, LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Co-counsel for Respondent, Annette F.

Lorie Nachlis, Esq.
Nachlis & Fink
155 Montgomery Street, #1400
San Francisco, CA 94104
Co-counsel for Respondent, Annette F.

John L. Dodd, Esq.
17621 Irvine Blvd., Suite 200
Tustin, CA 92780
Co-counsel for Appelant, Sharon S.

William E. Blatchley, Esq.
Blatchley & Blatchley
520 West Ash Street, Suite 100
San Diego, CA 92101
Co-Counsel for Appellant, Sharon S.

Terence M. Chucas, Esq.
3111 Camino Del Rio North #427
San Diego, CA 92108
Co-counsel for Minor, Joshua S.

Judith Klein, Esq.
5638 Lake Murray Blvd., Suite 208
La Mesa, CA 91942-1929
Co-counsel for Minor, Joshua S.

Hon. Cynthia Bashant
c/o Clerk of the Superior Court
San Diego County, Central Division
330 West Broadway
San Diego, CA 92101
1 copy as required

Clerk of the Court of Appeal
750 B Street, Suite 300
San Diego, CA 92101
1 copy as required

Alan Schlosser
ACLU—Northern California
1663 Mission Street, Suite 460
San Francisco, CA 94103

Peter Eliasburg
ACLU—Southern California
1616 Beverly Blvd.
Los Angeles, CA 90026

David Blair-Loy
ACLU—San Diego and Imperial Counties
P.O. Box 87131
San Diego, CA 92138

Alice Bussiere
Youth Law Center
417 Montgomery Street, Suite 900
San Francisco, CA 94104

Abigail Trillin
Shannan L. Wilber
Legal Services for Children
1254 Market Street, 3rd Floor
San Francisco, CA 94102

Eugene N. Stuart III
Law Offices of Jon-Marc Dobrin
980 Lincoln Ave., #250
San Rafael, CA 94901
BALIF Board Member

Richard Rothschild
Western Center On Law & Poverty
3701 Wilshire Blvd., Suite 208
Los Angeles, CA 90010

Michelle Uzeta
Protection & Advocacy, Inc.
3580 Wilshire Blvd., Ste. 902
Los Angeles, CA 90010