Do. No. S125643
Do. No. S125912
Do. No. S126945

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.M., Plaintiff and Appellant v. E.G., Defendant and Respondent	Ct. App. No. A101754 Hon. Simmons, J., Jones, P.J., and Gemello, J. Super. Ct. Marin County No. CV020777 Hon. Randolph E. Heubach
Elisa Maria B., Petitioner, v. Superior Court of El Dorado County Respondent Emily B. and El Dorado County Real Parties in Interest	Ct. App. No. C042077 Hon. Scotland, P.J., Sims and Hull, JJ. Super. Ct. El Dorado County No. PFS20010244 Com. Gregory Ward Dwyer
Kristine Renee H. Plaintiff and Appellant v. Lisa Ann R., Defendant and Respondent	Ct. App. No. B167799 Hon. Croskey, J., Klein, P.J., and Aldrich, J. Super. Ct. L.A. County No. PF001550 Hon. Richard Curtis

APPLICATION FOR FILING AMICUS BRIEF AND AMICUS BRIEF OF TOM HOMANN LAW ASSOCIATION, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, LESBIAN AND GAY LAWYERS ASSOCIATION OF LOS ANGELES, AND SACRAMENTO LAWYERS FOR THE EQUALITY OF GAYS AND LESBIANS IN SUPPORT OF K.M. IN S125643, REAL PARTIES IN INTEREST EMILY B. AND EL DORADO COUNTY IN S125912, AND LISA ANN R. IN S126945

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

CODES, STATUTES AND RULES:

CALIFORNIA:

OTHER AUTHORITY:

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF K.M. IN S125643, REAL PARTIES IN INTEREST EMILY B. AND EL DORADO COUNTY IN S125912, AND LISA ANN R. IN S126945

TO THE CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA AND TO ALL PARTIES HEREIN AND THEIR RESPECTIVE COUNSEL OF RECORD:

Pursuant to California Rules of Court, rule 29.1(f)(1), the Tom Homann Law Association (THLA), Bay Area Lawyers for Individual Freedom (BALIF), Lesbian and Gay Lawyers Association of Los Angeles (LGLA) and Sacramento Lawyers for the Equality of Gays and Lesbians (SacLEGAL), request permission to file the accompanying amicus curiae brief in support of K.M. in S125643, Real Parties in Interest Emily B. and El Dorado County in S125912, and Lisa Ann R. in S126945 on the issues identified by this court in its grant of review in each case.

INTEREST OF AMICUS CURIAE

THLA is a California non-profit corporation and 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. THLA's membership is comprised, primarily (although not exclusively), of

gay, lesbian, bi-sexual and transgendered (GLBT) attorneys, paralegals and law students. THLA's attorney members represent a significant segment of the GLBT community in legal matters, which include matters involving paternity, artificial insemination issues, adoptions by same sex couples and related familial disputes.

THLA is joined in this application and amicus brief by BALIF, LGLA and SacLEGAL.

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.

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 has submitted and sponsored amicus briefs in many cases important to the gay and lesbian community. LGLA's members include family law practitioners who are frequently consulted about the rights and responsibilities of parents in same-sex relationships. In addition, many of LGLA's members are parents themselves, and have a particular interest in obtaining clarification of their parental rights and responsibilities under California law.

SacLEGAL is a voluntary bar association, an affiliate of the Sacramento County Bar Association and an affiliate of the National Lesbian and Gay Law Association. SacLEGAL's membership is comprised of, but not limited to, Sacramento area gay, lesbian, bi-sexual, transgendered and queer (GLBTQ) attorneys, law students and paralegals. The membership also includes attorneys, law students and paralegals who are colleagues, friends and allies of the GLBT community. SacLEGAL's mission is to achieve equality and to provide a leadership presence for gays, lesbians and bisexuals through legal advocacy, legal education and participation in professional legal activities. SacLEGAL hopes to achieve this mission by making the Constitution and laws of the United States and the State of California applicable to all citizens in this state.

With this background, THLA, BALIF, LGLA and SacLEGAL are familiar with the current legal issues and legal problems related to GLBT domestic partnerships, especially when children have been created during the domestic partnership. Each of these organizations' attorney members represents the GLBT community in California's largest counties and surrounding areas. Each provides legal services, advocacy and education to populations who will be directly impacted by these pending cases. With that knowledge and background, THLA, BALIF, LGLA and SacLEGAL therefore trust that this amicus brief will substantially aid this court in rendering its decision in this case.

THE ACCOMPANYING AMICUS BRIEF WILL BE OF SUBSTANTIAL ASSISTANCE TO THE COURT

GLBT "families" are a reality in our society. More importantly, same sex couples are using Alternative Reproductive Technologies ("ART" or "ARTs") to create children which they intend to raise as a part of their "family," and, depending on the ART method used, the children may or may not be genetically related to one or both parents. This has led to a variety of legal issues governing the determination of parentage which remain in conflict among the appellate districts, most of which are at issue in the present cases pending before this court.

THLA urged this court in *Sharon S. v. Annette F.* (2003) 31 Cal.4th 417 (*Sharon S.*) to go beyond the immediate adoption issues presented in that case and address the creation of parental rights and responsibilities under the intended parent doctrine and based on the Uniform Parentage Act (UPA) provisions governing presumed parenthood. Those issues are now squarely before this court in a variety of factual scenarios representative of the complexity of present same sex familial relations and the creation of children through the use of ARTs.

Had each of the three pending cases involved heterosexual couples, resolution of the parentage issues would have been possible through use of the intended parent doctrine and by application of the UPA, regardless of marital status or the absence of a biological connection with the child. Either adult in a heterosexual relationship could establish their status as a "natural parent" of a child they intended to create using ARTs through the UPA, consistent with the intended parent doctrine recognized by this court in *Johnson v. Calvert* (1993) 5 Cal.4th 84, cert. denied, 114 S.Ct. 206 (1993), cert. dismissed, 114 S.Ct. 374 (1993) (*Johnson*) and applied by the Court of Appeal in *In re Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410.

Likewise, within the context of a heterosexual relationship (or at least presumed heterosexuality), courts have held a non-biologically related

adult male could petition for determination of status as a "natural father" (see *In re Nicholas H.* (2002) 28 Cal.4th 56, 62-63, 67 (*Nicholas H.*)) and a non-biologically related adult female could similarly qualify as the "natural mother" (see *In re Karen C.* (2002) 101 Cal.App.4th 932, 936-939 (*Karen C.*)) under the UPA based on post-birth conduct of raising the child as their own natural child. But, when the element of a same sex relationship has been added to the mix, appellate courts have differed in application of these legal principles.

There currently exists a line of appellate court decisions (*Curiale v. Reagan* (1990) 222 Cal.App.3d 1597, 1599 (*Curiale*), *West v. Superior Court* (1997) 59 Cal.App.4th 302, 305 (*West*), *Guardianship of Z.C.W.* (1999) 71 Cal.App.4th 524, 527 (*Z.C.W.*) and *Nancy S. v. Michele G.* (1991) 228 Cal.App.3d 831 (*Nancy S.*) – the "*Curiale* line") which state that the non-biologically related same sex partner of a birth mother lacks standing and could not be a "natural parent" under the UPA, even though both partners agreed to have the child through ARTs, both agreed to raise the child as their own natural child, and both had in fact raised the child as their own natural child. As such, depending on the ART method used, under the *Curiale* line of cases one or both of the same sex couple may not be recognized as a "natural parent."

Also, even if each of the same sex couple had a biological/birth connection with the child, there currently exists no certainty that both would be recognized as parents. This is because of the past pronouncement by the California Supreme Court in *Johnson* indicating "California law recognizes only one natural mother, despite advances in reproductive technology rendering a different outcome biologically possible" and declining to find a compelling reason to recognize a dual mother relationship. (*Johnson, supra*, 5 Cal.4th at p. 92, fn. 8.)

As discussed in the accompanying amicus brief, THLA, BALIF, LGLA and SacLEGAL submit the pending cases and recent legislative enactments provide this court with the compelling reasons to recognize the existence of a dual mother and dual father relationship in the context of a same sex couple with a child created through ARTs. Each organization urges this court adopt a rule in which the lower courts look first to the intent of the couple (regardless of sexual orientation, marital status, biological or birth connection) to create a child through ARTs. If satisfactory proof of intent to create the child exists, then each of the couple should be legally recognized as the "natural parent" of the child.

In cases where the intent to create a child through ARTs is not clear or where post-birth conduct demonstrates a parent-child relationship, then the lower courts should apply the UPA under a gender neutral reading to

determine legal recognition as a parent. Once legal paternity is established, the court can then address custody issues using the best interests of the child standard so as to maintain the parent-child bonds that exist.

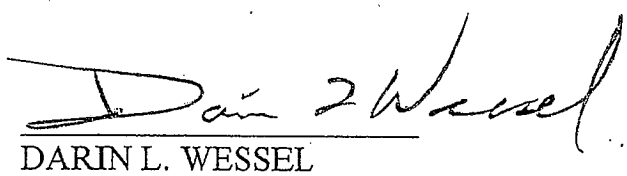
The accompanying amicus brief evaluates each of the pending cases under the proffered analysis for the resultant outcome.

CONCLUSION

For the reasons set forth above and in its proposed amicus brief, THLA, BALIF, LGLA and SacLEGAL request that their application for filing of the accompanying amicus brief be granted.

Respectfully submitted this 8th day of April, 2005.

MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP

BY: 

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The Tom Homann Law Association, Bay Area Lawyers for Individual Freedom, Lesbian and Gay Lawyers Association of Los Angeles,

and Sacramento Lawyers for the Equality of Gays and Lesbians (collectively referred to as "THLA" for ease of reference) submit the following amicus curiae brief in support of K.M. in S125643, Real Parties Emily B. and El Dorado County in S125912, and Lisa Ann R. in S126945.

ISSUES ADDRESSED

The central issues THLA addresses in this amicus brief are:

1. Whether both same sex partners can be considered the legal parents of children conceived as a result of Assistive Reproductive Technologies under intended parent doctrine announced in *Johnson v. Calvert, supra.*

2. Whether the Uniform Parentage Act (UPA) also permits same sex partners of children created through Assistive Reproductive Technologies to establish parentage based on post-birth conduct of receiving the child into the home and treating the child as one's own natural child.

Where appropriate to the discussion of the rule THLA requests this court adopt, THLA touches on other issues identified in the orders granting review in each of the three pending cases.

INTRODUCTION

Gay, lesbian, bi-sexual and transgendered (GLBT) families are becoming increasingly common in our society. The State of California has

long been in the process, if not the forefront, of addressing the uniquely challenging legal issues raised by GLBT relationships in a legal system which has been patterned on the historically predominant domestic relationship, heterosexual marriage. Added to this mixture of legal issues is the ever increasing prevalence of Assisted Reproductive Technologies (ART or ARTs)[1] which allow same sex couples to jointly agree to create children of their domestic relationship. Depending on the ART method used, the children created within these families may or may not be genetically related to one or both of the same sex partners.

The three cases now pending before this court provide a broad cross-section of the nature of these familial relationships and just how the current state of California law creates uncertainty in these families.

THLA submits that the Supreme Court should reaffirm the "intended parent" doctrine applied in *Johnson v. Calvert* (1993) 5 Cal.4th 84, cert. denied, 114 S.Ct. 206 (1993), and cert. dismissed, 114 S.Ct. 374 (1993) (*Johnson*) and *In re Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410 (*Buzzanca*) and hold same sex partners who intend to create a child through

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1. Many cases use terminology of "artificial insemination" which is consistent with traditional statutory language but has not kept pace with current medical terminology that has replaced "artificial" with "assisted" to reflect varying methods available to create children. (See 2 Hollinger et al., Adoption Law and Practice (2001) Assisted Reproductive Technologies, Collaborative Reproduction, and Adoption, §14.01, pp. 14-4 to 14-5 (rel. 14-5/00).)

ARTs and take steps in furtherance of that intent to create a child as a part of their "unitary family"[2] relationship are "natural parents" of the child regardless of marital status or biological/birth connection. To do so, this court will need to recognize the existence of a dual mother or dual father relationship, a proposition the court was unwilling to reach under the circumstances presented in *Johnson* where a husband and wife's claims of paternity over the child they sought to create through ARTs competed with that of the surrogate mother. (*Johnson, supra*, 5 Cal.4th at p. 92, fn. 8.) The present cases present distinctly different situations. Further, the compelling reason to recognize a dual mother and dual father relationship the *Johnson* Court found lacking is presented now in the context of same sex couples creating children through ARTs into their unitary families and by virtue of legislative action, namely Assembly Bill 205 (Stats. 2003, ch 421 (A.B. 205), eff. Jan. 1, 2005) expanding Family Code section 297 et seq. to place same sex couples on an almost equal footing to that of married heterosexual couples and the recognition of same sex parents under the adoption laws.

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2. The term "unitary family" was used by Justice Scalia in *Michael H. v. Gerald D.* (1989) 491 U.S. 110, 123, fn.3 (plur. opn. of Scalia, J.), a case originating out of California. Justice Scalia wrote, in pertinent part, "[t]he family unit accorded traditional respect in our society, which we have referred to as the 'unitary family,' is typified, of course, by the marital family, *but also includes the household of unmarried parents and their children. Perhaps the concept can be expanded even beyond this ...*" (*Ibid.* [emphasis added].)

To the extent necessary, the Supreme Court should disapprove of the decisions in *Curiale*, *West*, *Z.C.W.*, and *Nancy S.* THLA submits these appellate decisions are contrary to recognition of parent status for same sex partners under the intended parent doctrine and to the language of the UPA. They are also contrary to new Family Code section 297.5.

THLA urges a rule in which the lower courts look first to the intent of the couple (regardless of sexual orientation, marital status, biological or birth connection) to create a child through ARTs. If satisfactory proof of intent to create the child exists, then each of the couple should be legally recognized as the "natural parent" of the child. In cases where the intent to create a child through ARTs is not clear or where post-birth conduct demonstrates a parent-child relationship, then the lower courts should apply the UPA under a gender neutral reading to determine legal recognition as a parent based on such post-birth conduct, much like the father in *Nicholas H.* Once paternity is recognized among the same sex partners, presuming the case arises as a result of a dissolution of their relationship, the court can then proceed to evaluate the best interests of the child in determining appropriate visitation rights to protect the parent-child bonds.

LEGAL DISCUSSION

I.

THE INTENDED PARENT DOCTRINE SHOULD BE APPLIED TO SAME SEX COUPLES WHO CREATE CHILDREN THROUGH THE USE OF ASSISTIVE REPRODUCTIVE TECHNOLOGIES

A. THE PERTINENT STATUTORY PROVISIONS.

Family Code section 7600 et seq. sets forth the statutory provisions of the Uniform Parentage Act adopted by California. It provides that:

> "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child's *natural* or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

(Fam. Code, §7601 [emphasis added].) Significantly, this court recently stated in *Nicholas H.* that the term "natural" as used in Family Code sections 7611 and 7612 does not necessarily mean biological and therefore "'it is possible for a man to achieve presumed father status, with its attendant rights and duties, without being the biological father....'" (*Nicholas H., supra*, 28 Cal.4th at p. 64.) That is consistent with the general

principle that "[t]he parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents" (Fam. Code, §7602), and is important because the "California UPA was designed to equalize the status of legitimate and illegitimate children, and is concerned with the legal paternity of children conceived by artificial insemination [citations omitted]" (*Shin v. Kong* (2000) 80 Cal.App.4th 498, 504).

In terms of the focus that THLA urges the Supreme Court to take in setting forth a rule for the determination of parental status of children created within the unitary family of same sex partners, the Family Code provides:

> The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parents.

(Fam. Code, §7602.) Family Code section 7610 sets forth the general method of establishing the parent and child relationship. As each of the cases now pending before this court involve the mother-child relationship, THLA focuses its analysis on the establishment of that relationship, but since the statutory language uses the same the basis as establishing a father-child relationship, the analysis would apply equally to situations involving a male-male same sex partnership.

The Family Code provides:

> Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship. *Insofar as practicable*, the provisions of this part applicable to the father and child relationship apply."

(Fam. Code, §7650 [emphasis added].) Turning to the code sections applicable to determining a father-child relationship and read to apply to the determination of the mother-child relationship, California's Family Code provides:

> Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the [mother] and child relationship presumed under subdivision (d) of Section 7611."

(Fam. Code, §7630, subd. (b).)

> A [woman] is presumed to be the *natural* [mother] of a child if [s]he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:
>
> [...]

(d) [She] receives the child into [her] home and openly holds out the child as [her] natural child."

(Fam. Code, §7611, subd. (d) [emphasis added].)

With these statutory provisions in mind, a woman need not be biologically related to the child to be considered a natural parent under the UPA. (See *Nicholas H., supra*, 28 Cal.4th at pp. 64-66; *Karen C., supra*, 936-939.) Further, the Legislature, by the use of the language "in so far as practicable" in Family Code section 7650, recognized that there may well be situations in which determining whether a woman is a parent under the UPA may present unique issues different from that of a man as a parent.

B. A RULE OF INTENDED PARENTHOOD SHOULD BE APPLIED WHERE SAME SEX COUPLES IN A UNITARY FAMILY RELATIONSHIP CREATE A CHILD THROUGH THE USE OF ASSISTED REPRODUCTIVE TECHNOLOGIES.

The policy behind the UPA has been to further the notion of substantive legal equality of children regardless of the marital status of their parents, and to eliminate the distinction between 'legitimacy' and 'illegitimacy' in the substantive rights of children. (Uniform Parentage Act (1973) 9B West's Uniform Laws Annotated 287 (1987).) As noted in *Shin v. Kong, supra*, 80 Cal.App.4th at page 504 and as discussed in *Buzzanca, supra*, 61 Cal.App.4th at pages 1423-1424, the public policy behind the

UPA is particularly applicable in the situation of children created through the use of ARTs.

Turning to the context of children created through the use of ARTs by same sex partners in a domestic relationship, there is conflicting case law which the Supreme Court needs to resolve and harmonize. First, there are the cases such as *Buzzanca, supra*, [Ct. App. Fourth Dist., Div. Three] which have applied the intended parent doctrine to children created through ARTs. Such cases hold that the parties who agreed to create a child through ARTs are the legal parents, regardless of whether they are biologically related to the child. (See *Buzzanca, supra*, 61 Cal.App.4th at pp. 1417-1419.) Then there are the decisions in *Curiale, supra*, 222 Cal.App.3d at page 1599 [Ct. App., Third Dist.], *West, supra*, 59 Cal.App.4th at page 305 [Ct. App., Third Dist.], and *Z.C.W., supra*, 71 Cal.App.4th at page 527 [Ct. App., First Dist., Div. 4] which have held that, despite any agreement to create a child through ARTs, the same sex partner who did not give birth to the child and who was not biologically related has no standing to assert parental rights and duties under the UPA. Similarly, there is the decision in *Nancy S., supra*, 228 Cal.App.3d at pages 837-841 [Ct. App., First Dist., Div. One] which determined that the non-biologically related same sex partner was not a "parent" under the UPA.

As will be demonstrated in subsection 1 below, the decisions in *Curiale*, *West*, and *Z.C.W.* (the *Curiale* line) were incorrect in their conclusion that the non-biologically related non-birth mother in a same sex relationship lacks standing to assert a parent child relationship under the UPA. Similarly, the decision in *Nancy S.* and the *Curiale* line of cases violate the UPA provisions for establishment of the parent and child relationship. Specifically, these cases improperly rely upon the non-marital status of the same sex partner while ignoring the UPA provisions that "the parent and child relationship extends equally to every child and every parent, *regardless of the marital status* of the parents." (Fam. Code, §7602 [emphasis added].) They also ignore the non-biological provisions for presumed natural mother status based on the same sex partner having accepted the child into her home and having held out the child as her own. (Fam. Code, §§7611, subd. (d), 7650.) These decisions should be disapproved by this court as inconsistent with the Family Code which must be read in a gender neutral manner.

We must also recognize that under the current framework of the UPA when applied to same sex couples, we end up with two mothers or two fathers within a same sex domestic partnership each having claims to parental rights over the children produced through ARTs into their unitary family. This leads to the issue of whether there can be a dual mother or

dual father relationship in which each same sex parent retains his or her parental rights and the child's bonds with each are protected. On this issue, there is the California Supreme Court's prior decision in *Johnson* which declined to recognize a dual mother relationship because a compelling reason was not presented.

Johnson involved a husband and wife who agreed to create a child as a part of their family through ARTs using a surrogate mother. (*Johnson, supra*, 5 Cal.4th at pp. 87-88.) The *Johnson* Court determined that both the wife and surrogate had adduced evidence of a mother and child relationship. (*Id.*, 5 Cal.4th at p. 92.) However, the *Johnson* Court saw no compelling reason to recognize a dual mother relationship over the child (*Id.*, 5 Cal.4th at p. 92, fn. 8), and instead held that under the intended parent doctrine, the parental rights of the non-birth mother who intended to raise the child with her husband controlled over the parental rights of the surrogate birth mother (*Id.*, 5 Cal.4th at pp. 92-93).

The *Johnson* Court's decision to decline recognizing a dual mother or dual father relationship made sense under its specific facts given the child was to be raised in a two parent family that had sought to create the child, consistent with the public policy concerns of protecting family unity. Indeed, recognition of a dual mother relationship in the wife and surrogate mother would have disrupted family unity and would not have been in the

best interests of the child where the sole connection with the surrogate was the act of giving birth. The *Johnson* decision declining to recognize a dual mother relationship also made historical sense because paternity disputes at the time predominantly related to the results of biological procreative activity and involved questions of who should be recognized as the legal parent – the husband or the biological father; the wife or the biological mother. With the expansion of ARTs and the recognition of same sex partnerships, this traditional view of paternity determination no longer fits and must change. Same sex parents are a reality, the law needs only catch up in its legal recognition of such paternity.

As discussed in subsection 2 below, the Supreme Court now has the compelling reason to hold that a dual mother relationship, or even a dual father relationship, can exist where the child is created by same sex partners with an intent to raise the intended child in their unitary family. THLA will show how the recognition of a dual same sex parent and child relationship satisfies and is consistent with the important interest in protecting established parent-child relationships. (See, e.g., *Nicholas H., supra*, 28 Cal.4th at p. 65 ["the courts have repeatedly held, in applying paternity presumptions, that extant father-child relationship is to be preserved at the cost of biological ties"].)

THLA will also show that by adopting the intended parent doctrine in conjunction with a unitary family analysis, the courts can ensure that the parents who decide to have children through ARTs bear the benefits and burdens of the children they produce, that the children are likewise protected by having a two parent support system, and that society is protected. This same analysis avoids the concerns expressed by courts, such as *Nancy S., supra,* 228 Cal.App.3d at page 841, of opening up the flood gates to claims of parental rights by child care providers, close family friends and the like.

THLA will also show that a back-up analysis under a gender neutral reading of the UPA's presumptions of paternity will act as a safeguard in cases where the intent may not be clear at the time ARTs were used. Or, where there is post-birth conduct consistent with a parent-child relationship, ala *Nicholas H*, warranting legal recognition.

1. THE DECISIONS IN *CURIALE*, *WEST*, *Z.C.W.*, AND *NANCY S.* ARE INCONSISTENT WITH THE UPA; A SAME SEX PARTNER HAS STANDING TO ESTABLISH A PARENT-CHILD RELATIONSHIP UNDER THE UPA.

The express language of the UPA does not support the appellate court holdings in *Curiale*, *West*, and *Z.C.W* that a same sex domestic partner cannot be considered an "interested person" with standing to assert parental

status over a child born into the same sex couple's unitary family. For the courts in *Curiale*, *West*, and *Z.C.W* to reach their conclusion, they impermissibly took the marital status of the parties and the biological relationship of the parties to the child as controlling factors, contrary to what the UPA requires.

In the earliest case, *Curiale*, the court, in a one paragraph discussion, held that the plaintiff had no standing under the UPA because her former same sex partner, the birth mother of their child conceived through ART, was "the natural mother of the child." (*Curiale, supra*, 222 Cal.App.3d at pp. 1599-1600.) The court in *West* followed the reasoning of *Curiale*. (*West, supra*, 59 Cal.App.4th at p. 305.) The *West* Court stated, in pertinent part, "[a]s a person unrelated to Cady [the child], Lockrem is not an 'interested person' ..." (*Id.*, 59 Cal.App.4th at p. 306.) In turn, *Z.C.W.* followed *Curiale* and *West*. (*Z.C.W., supra*, 71 Cal.App.4th at p. 527.)

This court's holding in *Nicholas H.* demonstrates that the *Curiale* line of cases each mistakenly concluded a claim for parental rights under the UPA can only be brought by the biological mother or the birth mother. As noted in *Nicholas H*, the term "natural" under the UPA does not require a biological connection. (*Nicholas H., supra*, 28 Cal.4th at p.64.) Indeed, if the term "natural" required a biological, or even a birth connection between the parent and child, a husband whose wife had a child by another man

could never be a natural parent and could never have standing under the rationale of the *Curiale* line of cases. This, of course, we know to be contrary to Family Code section 7611, subdivision (d), which provides that man is presumed to be a "natural" parent if he received the child into his home and holds the child out as his natural child. It is likewise no different for a woman who receives a child into her home and holds the child out as her own because Family Code section 7650 makes section 7611, subdivision (d) applicable to a woman. And, nothing in Family Code section 7650 states that those sections applicable to determining a mother-child relationship through the use of the sections applicable to the father-child relationship cannot create a presumed mother status in two women, nor does it state that they do not apply to same sex relationships. The Rhode Island Supreme Court recently reached a similar conclusion that Rhode Island's version of the UPA, statutes that are virtually identical to California's Family Code sections 7650 and 7611, subdivision (d), provided jurisdiction to Rhode Island's family courts to determine the existence or non-existence of a mother and child relationship as applied to the non-biological/non-birth mother same sex partner. (*Rubano v. Dicenzo* (R.I. 2000) 759 A.2d 959, 966-967.)[3]

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3. Jurisdiction has also been based on parens patriae or equity powers. (See *E.N.O. v. L.M.M.* (1999) 429 Mass. 824, 827-828; *V.C. v. M.J.B.* (2000) 163 N.J. 200, 220-222; *In re Custody of H.S.H.-K.* (1995)

The *Curiale* line of cases also implicitly violate Family Code section 7602's provision that marital status has no impact on the parent and child relationship. Each case focused on the same sex partnership status as a basis for their decisions. Similarly, the *Nancy S.* Court improperly looked to the non-marital status of the same sex couple, contrary to the requirements of the UPA. The *Nancy S.* Court stated, in pertinent part:

> [Michele G.] does not contend that she and respondent had a legally recognized marriage when the children were born. Based on these undisputed facts, the [lower] court correctly determined that [Michele] could not establish the existence of a parent-child relationship under the Uniform Parentage Act.

(*Nancy S., supra*, 228 Cal.App.3d at p. 836.)

As a final point, neither *Nancy S.*, nor the *Curiale* line of cases, addressed the line of cases applying the intended parent doctrine, namely *Johnson*, to determine whether the same sex partner who was not the birth mother could still be a parent based on the children in those cases having been intended children of the same sex unitary family conceived through ARTs.

Accordingly, in the context of a child that is the product of a same sex relationship, the non-birth mother domestic partner, who welcomes the

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193 Wis.2d 649, 681-691.)

child into her household and holds the child out as her own, has a mother-child relationship. The birth mother domestic partner would also have a mother-child relationship. Likewise, there could be the situation in which one of the partner's ovum is used and the other partner gives birth to the child such that one partner has a biological connection and the other partner has a birth connection, generally entitling each to presumed mother status.

The next question is whether both mothers' parental rights should be recognized. *Johnson* declined to answer this question, which THLA requests this court now answer in the affirmative.

2. THE COURT HAS A COMPELLING REASON TO RECOGNIZE A SAME SEX DUAL PARENT RELATIONSHIP IN THE CONTEXT OF A SAME SEX UNITARY FAMILY.

The reality of same sex partners living in and creating children within unitary family relationships, as represented by the three cases before the court, presents the compelling reason for the Supreme Court to address the issue the *Johnson* Court declined to answer and to permit a dual mother or dual father relationship with a child created within the same sex unitary family. Likewise subsequent legislative action provides the court with a sound basis to recognize dual mother and dual father relationships within the context of a same sex unitary family.

Since the holding in *Johnson*, the State of California has officially recognized the same sex unitary family by virtue of its having enacted same sex domestic partnerships. (Fam. Code, §297 et seq.) In expanding the rights and responsibilities of this type of unitary family, the Legislature has recognized, "many lesbian, gay, and bisexual Californians have formed lasting, committed, and caring relationships with persons of the same sex" and many of these couples "raise children and care for other dependent family members together." (Stats. 2003, ch. 421 (A.B. 205), §1(b).) Thus, we now have Family Code section 297.5 providing registered domestic partners with the same rights, protections, benefits and subject to the same responsibilities, obligations and duties as granted to and imposed on spouses. (Fam. Code, §297.5, subds. (a) and (b).) Additionally, the Legislature has implicitly allowed for the existence of two same sex parents with parental rights and duties over a child by virtue of recent statutory amendments codifying domestic partners' ability to utilize the stepparent adoption process. (Fam. Code, §9000, subd. (b) and (f), as amended by Stats. 2001, ch. 893 (A.B. 25), §5.)[4]

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4. Several sister states have effectively allowed a dual mother relationship through adoption where there was consent to an adoption by the same sex domestic partner. (See, e.g., *In re Adoption of B.L.V.B.* (Vt., 1993) 628 A.2d 1271, 1273-1274; *In re Adoption of a child by J.M.G.* (N.J. Ch Div., 1993) 632 A.2d 550; and *In re Evan* (N.Y. Surr., 1992) 583 N.Y.S.2d 997, 999-1000 [and cases cited therein].)

The best interest of both society and a child born through ARTs into a same sex unitary family is to have both partners who agreed to create the child recognized as legal parents, each responsible for the care of that child. Society, as demonstrated through the Family Code, values and promotes the two parent family, especially as it relates to raising a child. Simply put, if anything happens to prevent one parent from providing emotional, financial or other support to the child, the other parent can take over that share of the responsibilities. Likewise, should the same sex parents later decide to separate, as in the present cases and as happens in heterosexual marriages, the child will not be deprived of the emotional and financial support provided by an adult whom that child has always known as a parent. Finally, where two individuals jointly agree to create a child through ARTs which they both intend to raise as their own child, it makes sense for society to recognize both individuals as parents, regardless of sexual orientation or marital status, and to impose on both individual the duties and obligations related to rearing the child they set about to create.

As such, there is now a compelling reason for this court to recognize, in the three cases now pending, a dual mother or dual father relationship in the context of a same sex unitary family. This recognition should apply regardless of whether the same sex partners are registered domestic partners for the same reasons paternity is recognized regardless of marital status.

3. THE APPLICATION OF THE INTENDED PARENT DOCTRINE IN CONJUNCTION WITH THE CONCEPT OF A UNITARY FAMILY ENSURES THAT A CHILD BORN TO A SAME SEX COUPLE IS PROVIDED FOR WHILE ENSURING THAT THE FLOOD GATES ARE NOT OPEN TO OTHERS TO CLAIM PARENTAL STATUS.

The intended parent doctrine has been recognized by the Supreme Court and several appellate courts in this state when children are created through the use of ARTs. (*People v. Sorenson* (1968) 68 Cal.2d 280; *Johnson, supra*, 5 Cal.4th at p. 93; and *Buzzanca, supra*, 61 Cal.App.4th at pp. 1418-1420.) These courts have held that deliberate procreation includes the voluntary and express consent to a medical procedure for the purpose of conceiving a child whom that person intends to parent.

The most compelling case is that of *Buzzanca*. In *Buzzanca*, the Court of Appeal applied the intended parent doctrine and held that a husband and wife who intended to have a child through a surrogate mother were the lawful parents of the child, even though neither the husband, nor the wife, were biologically related to the child. The court focused on the intent of the parties, which was to have a child. The court found that the same statute that makes a husband the lawful father of a child because of his consent to artificial insemination (Fam. Code, §7613) applied to both intended parents. Just as a husband is deemed to be the lawful father of a

child unrelated to him when his wife gives birth after artificial insemination, the court reasoned, so should a husband and wife be deemed the lawful parents of a child after a surrogate bears a biologically unrelated child on their behalf. In each instance, a child is procreated because a medical procedure was initiated and consented to by the intended parents.

Although the sexual identity of the intended parents in a same sex unitary family are different than those in *Buzzanca*, the same intended parent test should be applied where they agree to create a child through ARTs and intend to raise that child within their unitary family. As noted by the *Buzzanca* Court, the statutory policy behind "the artificial insemination statute" "is really echoing a more fundamental idea ... [one that] is often summed up in the legal term 'estoppel'" such that the individuals bringing a child into being through ARTs cannot avoid liability for that child's support. (*Buzzanca, supra*, 61 Cal.App.4th at p. 1420.) Plus, the fact that the intended mother did not give birth to the child was irrelevant to the determination of parental responsibility. (*Id.*, 61 Cal.App.4th at p. 1421.)

The issue of child support provides an additional reason for this court to resolve the conflict between the intended parent cases and the *Curiale* line of cases and recognize a dual mother and dual father relationship. Under the rationale of *Curiale*, the non-biological non-birth same sex partner would lack standing to establish parental rights, yet the

child or public agency would have standing to have the court declare the individual a parent responsible for child support using the intended parent doctrine. Or, as presented in *Elisa Maria B. v. El Dorado County Superior Court*, No. S125912, the non-biological non-birth partner who intended to create a child through ARTs can utilize the absence of biological and birth status as the loophole to avoid responsibility for the care of a child that person intended to create. Such a situation harms the child, the other partner who must bear the entire cost of raising the child, and ultimately society when it is forced to provide support for the child.

THLA notes that sister states have reached conflicting results under similar circumstances. (*Karen T. v. Michael T.* (N.Y. Fam. Ct., 1985) 484 N.Y.S.2d 780, 784 [female who changed identity to live as a male and entered into marital relationship with birth mother held a "parent" and owed child support where female agreed to raise children of the marital relationship created through ARTs]; contra, *State ex rel. D.R.M.* (Wash. Ct. App., 2001) 34 P.3d 887 [held only biological parent is a natural parent under UPA - same sex partner therefore not obligated to pay child support, but indicating potentially different result under facts similar to *Karen T, supra*].) However, the stronger argument favors application of the intended parent doctrine under the present state of California law which recognizes same sex couples, and consistent with public policy behind that recognition,

public policy recognizing the unitary family, and public policy supporting parental responsibility for the care of children created by the parents.

Of course, the criticism that has been raised by courts such as *Nancy S., supra*, 228 Cal.App.3d at page 841, is that extending parental rights to the non-biological non-birth mother "could expose other natural parents to litigation brought by child-care providers of long standing, relatives, successive sets of stepparents, or other close friends of the family." This slippery slope argument should be rejected.

By using the intended parent doctrine, the "parents" are limited to the individuals who agreed to create a child through ARTs and intended to raise that child as their own. It is simply very difficult to imagine how the amorphous class of individuals that the *Nancy S.* Court feared could fall within that test so as to claim parental status. Further, the public policy favoring parental responsibility to those who create children, be it through natural or assistive means, simply out weighs the burden to the courts of having to adjudicate claimed parental status.

Second, even in the realistic scenario of a domestic partner unilaterally deciding to create a child through artificial insemination – as indicated by the facts in *K.M. v. E.G.*, No. S125643, the non-birth parent same sex partner could not ipso facto be deemed a parent. Rather, he or she would have to satisfy the requisites of Family Code section 7611,

subdivision (d), that he or she "receive[d] the child into his [or her] home and openly [held] out the child as his [or her] natural child" to establish parental rights, and it is under those circumstances that the states interest in preserving the emotional and financial bonds between the child and the same sex partner would support the recognition of a parent-child relationship.

Further, the critical distinction that prevents such "others" from claiming parental rights is the existence of a same sex unitary family, such as evidenced in the present cases, each demonstrating a period of a committed same sex relationship. It is highly doubtful that the day care provider or other relatives could satisfy such a requirement as to open the flood gates that the *Nancy S.* Court was worried about.

II.

THE FAMILY CODE SECTIONS GOVERNING PRESUMED PARENTAGE PROVIDE AN ADEQUATE SAFEGUARD WHERE THE ISSUE OF INTENDED PARENTHOOD IS DISPUTED BETWEEN THE SAME SEX PARTNERS

There are bound to be disputes among same sex partners over a mutual intent to create children as part of their unitary family, as is presented in *K.M. v. E.G.*, No. S125643. The intent to create a child rarely exists in a vacuum. In all cases, there will be evidence of post-birth conduct

among the partners with respect to the rearing of the child such that the family court or juvenile court can resort to the provisions of the UPA and weigh the evidence in favor of or against recognition of a given partner's parent status.

Specifically, courts have recognized that a presumed parent's acceptance of a child into their home and act of caring for that child are predominating factors which would give rise to legal parentage. As this court recently stated, "in the case of an older child [over two years of age] the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity." (*Nicholas H., supra*, 28 Cal.4th at p. 65; cf. *Michael H., supra*, 491 U.S. 119-120 [California's presumption of parenthood for non-biological father is one of substantive policy protecting family integrity].) Or as the appellate court in *Karen C.* recognized, "[t]he judicial determination of paternity is thus a mixture of a search for genetic truth and the implementation of the strong public policies favoring marriage [now including domestic partnership] and family stability, and disfavoring labels of illegitimacy." (*Karen C., supra*, 101 Cal.App.4th at p. 937.) The existence of familial relationships between a child and the adults the child considers to be his or her parents is no less important if they are a man and a woman, two mothers, or two fathers.

Accordingly, in cases where there is disputed evidence of intended parentage, or where one partner unilaterally created a child through ARTs, but both partners equally raised the child as their own child, a rule should be adopted under which the lower courts utilize the UPA provisions governing presumed motherhood and fatherhood based on the post-birth conduct of receiving the child into the home and holding the child out to be one's natural child. Should the lower court determine each same sex partner has the status of a presumed parent, the lower court can then evaluate whether the evidence and best interests of the child compel each be recognized as mothers or fathers or whether one of the partners was always intended and remained to be the child's sole parent. Of course, where the partners are in a registered domestic partnership, each will have the burden of Family Code section 7540's presumption of paternity for children created during the domestic partnership and the concomitant protections of Family Code section 7613 requiring consent to ARTs before paternity will be imposed on the non-birth partner.

III.

APPLICATION OF THLA'S PROFFERED RULE OF INTENDED PARENTHOOD AND APPLICATION OF THE UPA TO DETERMINE PATERNITY IN THE THREE PENDING SAME SEX PARTNER CASES

The variety of the factual background of the three pending cases provides this court with the opportunity to demonstrate application of the rules urged by THLA and to provide guidance to resolution of future disputes. The basic factual information used for this analysis is from the factual recitation set forth in the appellate court opinions.[5]

A. K.M. v. E.G.

In this case, the evidence recited by the appellate court indicates E.G. was the birth mother and that K.M. was biologically related to the children by virtue of egg donation. It was determined below that at the time ARTs was used to impregnate E.G., E.G. had insisted she be the sole parent and K.M. had acquiesced. Nevertheless, the parties discussed the potential of adoption after a period of years when E.G. felt their relationship was stable. (*K.M. v. E.G.* (2004) 13 Cal.Rptr.3d 136, 139-141, Slip. Opn. at pp. 2-4 (*K.M.*).)

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5. Citations are to the slip opinion where available to counsel, and alternatively to the California Reporter cite for each case.

After E.G.'s twins were born, the conduct of both E.G. and K.M. towards the children were generally consistent with that of co-parents. Although when it came to the issue of telling the daughters of their genetic relationship with K.M., E.G. insisted she was their only mother and referred to the waiver of rights on the ovum donor agreement. (See *K.M., supra*, 13 Cal.Rptr.3d at pp. 141-143, Slip. Opn. at pp. 4-7.)

The appellate court applied the intended parent doctrine announced in *Johnson*. It concluded that K.M. was not a parent under the intended parent doctrine based on the evidentiary conclusions of the parties' intent that E.G. be the sole legal parent at the time ARTs was used to create the children. (*K.M., supra*, 13 Cal.Rptr.3d at pp. 144-149, Slip. Opn. at pp. 9-18.) THLA agrees with this analysis and conclusion.

The appellate court then turned to the effect of the parties' post-birth conduct and an examination of the presumptions of parentage under the UPA based on that conduct. (*K.M., supra*, 13 Cal.Rptr.3d at pp. 151-153, Slip. Opn. at pp. 19-23.) Under the rule proffered by THLA, this again was correct. However, the appellate court looked to *Johnson*'s decree of only one natural mother and inapplicability of statutory presumptions when the identity of the natural mother is not an evidentiary question to conclude K.M. could not be recognized as a mother regardless of the post-birth conduct of raising the daughters as her own daughters and actions as a co-

parent. (*Id.*, 13 Cal.Rptr.3d at p. 151-152, Slip. Opn. at p. 20.) It is here that THLA must depart with the conclusions of the appellate court and urge remand for redetermination of parental status based on application of the UPA presumptions.

In *Johnson*, the court was essentially called upon to break a tie between the wife who intended to create the child and the surrogate who gave birth to the child as to which would be the legal mother. Similarly, in the case of *Miller v. Miller* (1998) 64 Cal.App.4th 111, relied upon by the appellate court in the present case, the court was called upon to break a tie in claims of legal paternity between former husband who had been given partial custody of the daughter as part of the divorce proceedings and the subsequent step-father who claimed to be the biological father of the girl and who had accepted the girl into his home.

In the context of a same-sex partnerships, the tie breaker approach of *Johnson* and *Miller v. Miller* do not necessarily apply, especially with a recognition of dual-mother or dual-father status. As to E.G. and K.M., we are not dealing with an either or determination. E.G. is and will remain a legal mother of the girls. The question is whether K.M. should also be recognized as a mother to the girls based on her post-birth conduct in raising the girls as a parent. Thus, with the recognition of dual-mother status in the context of a same sex unitary family, the *Johnson* Court's

holding the statutory presumptions of parentage do not apply where the identity of the natural mother is not an evidentiary question must fall where the issue is whether a same sex partner should be recognized as a legal co-parent.[6] That is why this case should be remanded for determination of whether K.M. should be recognized under the UPA presumptions of motherhood as a co-parent to the girls.

If the lower court determines K.M. should be recognized as a legal co-parent, then the inquiry would turn to one of the best interests of the children in terms of visitation rights given the split in K.M. and E.G.'s relationship. Such inquiry is important to maintenance of the bonds between a parent and child.

B. ELISA MARIA B. V. SUPERIOR COURT OF EL DORADO COUNTY

In this case, the appellate court held non-biologically related same sex partner Elisa B. could not be a "parent" under the Uniform Parent Act of the twin children born by her same-sex partner Emily B. (*Elisa Maria B. v. Superior Court* (2004) 13 Cal.Rptr.3d 494, 499-501.) This holding was

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6. Certainly, if E.G. had given birth to the daughters before her relationship with K.M., we would be closer to the circumstances of *Miller v. Miller*. Under such circumstances, the court could find K.M.'s actions of acting as a co-parent did not confer legal status as a mother because she would have started in the position of a step-parent. Further, in such cases, the step-parent adoption process available to registered domestic partners would dictate the proper course for recognition of K.M. as a legal parent. (See Fam. Code, §9000, subds. (b) and (g).)

reached despite apparently uncontradicted evidence Elisa and Emily intended to create the children through ARTs, considered them to be children of both women, held the children out as their own children while raising them in their home for a period of almost one and one-half years before they broke up, and Elisa's role as the primary means of financial support for the children. (See *Elisa Maria B. v. Superior Court, supra*, 13 Cal.Rptr.3d at pp. 496-499.) The result of the appellate court decision is that, despite the lower court's finding of intended parenthood and post-birth conduct of raising and supporting the twins, Elisa escapes the responsibility of providing financial support to the twins she and Emily created through ARTs, with the County and tax payers ultimately bearing the responsibility of financial support.

Under application of the intended parent doctrine and the UPA as proffered by THLA, the trial court decision finding Elisa B. a parent based on intended parenthood and based on post-birth conduct of raising the twins as her own children should be affirmed. The appellate opinion to the contrary must be reversed. Elisa B. should bear the responsibility and financial support obligations related to her decision with Emily to bring these children into the world as decided by the trial court. Of course, Elisa B. would also be entitled to appropriate visitation rights as the trial court determines to be in the best interests of the children.

C. KRISTINE RENEE H. V. LISA ANN R.

In this case, Kristine and Lisa, who had been in a committed relationship for about eight years, sought to create a child through ARTs. During Kristine's pregnancy, they took the step of obtaining a pre-birth judgment of paternity based on their stipulation for entry of judgment. After Lauren was born, both Kristine and Lisa raised Lauren together as a family in the same home with Lauren referring to Kristine as "mommy" and Lisa as "momma." After Kristine and Lisa broke up, Kristine collaterally attacked the judgment of paternity contending it was void because it could not be based on the parties' stipulation. (*Kristine Renee H. v. Lisa Ann R.* (2004) 16 Cal.Rptr.3d 123, 127-130.)

The appellate court determined the pre-birth judgment of paternity was void because it could not be based on an agreement of parentage, but determined Lisa could establish paternity under a gender neutral reading of the UPA, its contemplation of "*two legal parents irrespective of their gender*," and Lisa's post-birth conduct of raising Lauren as her own child. (*Kristine Renee H. v. Lisa Ann R., supra*, 16 Cal.Rptr.3d at pp. 131-135 [quoted portion at p. 135; emphasis in original].) The appellate court also concluded the intended parent doctrine supported establishment of a parent child relationship between Lisa and Lauren based on Kristine and Lisa's

actions to create Lauren and as evidenced by the pre-birth stipulation of paternity. (*Id.*, 16 Cal.Rptr.3d at pp. 144-146.)

Under application of THLA's proffered test, the result of Lisa's ability to establish her status as a co-parent under the intended parent doctrine and a gender neutral reading of the UPA, as reached by the appellate court, would remain the same. But, the aspect of the appellate opinion finding the pre-birth judgment of paternity void as based on the stipulation of intended parents is troublesome because it essentially holds the stipulation has evidentiary value of paternity, but, because it is an agreement of paternity, it cannot support the judgment. THLA is aware of no provision in the UPA precluding a trial court from determining parentage based on written evidence, in this case the acknowledgment by stipulation that both Kristine and Lisa presumptively intended to create Lauren.[7]

More important, there was no analysis as to whether the trial court could have properly entered the pre-birth judgment of paternity based on Family Code section 7611 as applied to a mother. Specifically, a gender neutral reading of Family Code section 7611, subdivision (b), could have

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7. THLA's counsel does not have the benefit of a review of the actual stipulation and its contents. It may well be that the stipulation itself, standing alone, provided insufficient evidentiary basis for the trial court to have reached a pre-birth determination of paternity.

allowed the trial court to determine paternity in that of Lisa if there was evidence of an attempted marriage (even though the attempted marriage would be void) before the birth. It further appears that the stipulation contained recitations intended to invoke the provisions of Family Code section 7611, subdivision (c), by providing Lisa would be identified as "father" on the birth certificate and that she was agreeing to be responsible for postnatal care. (See *Kristine Renee H. v. Lisa Ann R., supra*, 16 Cal.Rptr.3d at p. 128.) These issues are important in that pre-birth judgments of paternity entered pursuant to stipulation may well have a sufficient jurisdictional basis under the UPA. The appellate court's pronouncement essentially calling into question the validity of all such stipulated pre-birth judgments should be reversed.

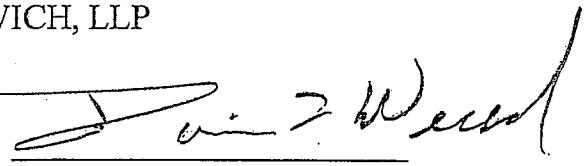
CONCLUSION

For the reasons set forth above, THLA requests that the Supreme Court hold a dual mother and dual father relationship with a child can be established in the context of a same sex unitary family. Second, THLA requests that the Supreme Court apply the intended parent doctrine to same sex couples who use ARTs to create a child with the intent to raise that child as a part of a unitary family, and that the Family Code sections related to presumed parent status are applicable under such cases based on a gender neutral reading and regardless of whether the same sex partners are

registered, the given same sex partner is biologically related to or gave birth to the child. The *Curiale* line of cases inconsistent with this approach should be disapproved.

Respectfully submitted this 8th day of April, 2005.

MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP

BY: 

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CERTIFICATION OF BRIEF FORMAT

Pursuant to California Rules of Court rule 29.1(c)(1), I hereby certify that following brief was produced using WordPerfect and that the brief, inclusive of the cover pages, application, and tables, contains 11031 words based on the WordPerfect word count.

Dated this 8th day of April, 2005.

MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP

BY: _____
DARIN L. WESSEL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA		FOR COURT USE ONLY
TITLE OF CASES (Abbreviated) **Kristine H. v. Lisa R.; Elisa B. v. Superior Court; K.M. v. E.G.**		
ATTORNEY(S) NAME AND ADDRESS DARIN L. WESSEL, SBN 176220 MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP 555 W. Fifth Street, 31st Floor (213) 996-8363/Fax: (213) 996-8361		
ATTORNEY(S) FOR: Amicus Curiae Tom Homann Law Association	HEARING DATE-TIME:	DO. NO.s: S125643; S125912; S126945

DECLARATION OF SERVICE

I, Gregory Scott Glenn, declare that: I am over the age of eighteen years and not a party to the action; I am employed in, or am a resident of the County of Los Angeles, California; where the mailing occurs; and my business address is 555 West Fifth Street, 31st Floor, Los Angeles, CA 90013, telephone number (213) 996-8363; facsimile number (213) 996-8361. I further declare that I am not a registered California process server and I am readily familiar with the business practice for collection and processing of correspondence, pleadings, and discovery for mailing via U.S. MAIL, UPS OVERNIGHT MAIL, FACSIMILE AND/OR PERSONAL SERVICE pursuant to which practice I served the following original document(s) or true copies thereof, with all exhibits:

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by one or more of the following methods of service for each addressee respectively as follows:

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

Executed on April 8, 2005.

Gregory Scott Glenn

Kristine H. v. Lisa R., S126945	Elisa B. v. Superior Court, S125912	K.M. v. E.G., S125643
Court of Appeal No. 2d Civ.: B-167799 Los Angeles No. PF-110550	Court of Appeal No.: CO42077 El Dorado No. PFS20010244	Court of Appeal No.: A101754 Marin County No. CV020777

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Clerk of the Court **LOS ANGELES SUPERIOR COURT** 111 North Hill Street Los Angeles, CA 90012	Trial court: **KRISTINE H.**
Court of Appeal **SECOND APPELLANT DISTRICT, DIV 3** 300 South Spring Street Los Angeles, CA 90013	Court of Appeal: **KRISTINE H.**
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Clerk of the Court **THIRD DISTRICT COURT OF APPEAL** 900 North Street, 4th Floor Sacramento, CA 95814	Court of Appeal: **ELISA B.**
Clerk of the Court **EL DORADO COUNTY SUPERIOR COURT** 495 Main Street Placerville, CA 95667	Trial court: **ELISA B.**

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Clerk of the Court **MARIN COUNTY SUPERIOR COURT HALL OF JUSTICE** 3501 Civic Center Drive San Rafael, CA 94903	Trial court: **K.M.**
Clerk of the Court **FIRST DISTRICT COURT OF APPEAL, DIV. 5** 350 McAllister Street, First floor San Francisco, CA 94102	Court of Appeal: **K.M.**
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