A23-1782

STATE OF MINNESOTA

IN COURT OF APPEALS

Julianna Lynn Sheridan, et al.,

Appellants,

vs.

William Christopher Edrington,

Respondent.

BRIEF OF AMICUS CURIAE
NATIONAL CENTER FOR LESBIAN RIGHTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

OTHER AUTHORITIES

I. Introduction[1]

The district court's decision conflicts with established Minnesota policies creating clarity and permanence regarding the legal parentage of children born through assisted reproduction, respecting the privacy and autonomy of married families, protecting established parent-child bonds, and ensuring equal protection of the laws to the children of same-sex parent families.

Like all children, children born to same-sex couples through assisted reproduction have a compelling interest in the security, stability, and predictability of their legal parentage and in maintaining a protected relationship with both parents. Similarly, married parents have a compelling interest in knowing that when they use assisted reproduction to have a child, the law will respect and protect the resulting family. Here, the district court failed to protect the child and family in this case based upon an erroneous application of Minnesota law, which plainly states that a sperm donor is not a parent. The negative ramifications of this erroneous decision for Minnesota families and Minnesota law are significant.

[1] Amicus NCLR hereby certifies under Minnesota Rule of Civil Appellate Procedure 129.03 that no counsel for a party authored the brief in whole or in part and no person or entity, other than the *amicus curiae* or its counsel, made any monetary contribution to the preparation or submission of the brief.

The trial court's order in this case needlessly casts doubt on the legal parentage of many children and opens the door to destabilizing litigation questioning the legal status of countless families created through assisted reproduction. The trial court's erroneous approach is particularly troubling, given the longstanding protections afforded to married parents and strong presumption that a child born to a married couple is the legal child of both spouses.

Under Minnesota law, a child born to a married couple is presumed to be the legal child of both spouses; an alleged father must allege a sexual relationship with the birth mother to have standing to bring a paternity claim; and a gamete donor may not assert biological or legal parentage. In light of these clear statutory provisions and Respondent's acknowledgement that he provided his gametes as a donor, the district court erred by failing to dismiss his claim. Amicus National Center for Lesbian Rights urges the Court to reverse and to dismiss Respondent's petition as a matter of law at the pleading stage.

II. Interests of Amicus Curiae

The National Center for Lesbian Rights ("NCLR") is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education. NCLR was founded in 1977 by legal scholar and

lesbian Donna Hitchens. NCLR is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels and advocates for equal treatment of LGBT people and their families. NCLR provides free legal assistance to LGBT people and their legal advocates and conducts community education on LGBT issues.

NCLR submits this amicus brief because it is concerned by the implications of the trial court's decision for LGBT-parent families, as well as many other families created through assisted reproduction. The court failed to properly apply the most recent amendments to Minnesota's parentage statutes regarding donors or to fully consider the purpose of Minnesota's provisions concerning children born through assisted reproduction. In denying the motion to dismiss, the court suggested that the child's sperm donor rather than the birth mother's spouse could be the child's second legal parent under Minnesota law. That ruling undermines central purposes of Minnesota's family law—to facilitate the use of assisted reproduction by providing certainty and stability regarding the legal parentage of children born through assisted reproduction, to protect the stability of marriage and the privacy and autonomy of marital families, and to promote the best interest of children by preserving established parent-child bonds.

NCLR is well-suited to assist the Court in considering the important issues raised by this case. NCLR has represented same-sex couples seeking the freedom

to marry in Alabama, California, Florida, Idaho, New Mexico, South Dakota, Tennessee, and Wyoming, including serving as counsel in one of the four cases consolidated in *Obergefell v. Hodges*, 576 U.S. 644 (2015), which established nationwide marriage equality. In 2017, NCLR represented a married lesbian couple from Arkansas in *Pavan v. Smith*, 582 U.S. 563 (2017), which held that states must afford married same-sex couples the same parental rights and protections given to other married couples. NCLR also was counsel in *V.L. v. E.L.*, 577 U.S. 404 (2016), which held that states must give full faith and credit to same-sex parent adoptions from other states.

In addition to these U.S. Supreme Court cases, NCLR has participated as counsel or amicus in scores of state court cases involving the parental rights of same-sex parents, including: *Kulla v. McNulty*, 472 N.W.2d 175 (Minn. Ct. App. 1991); *Leckie and Voorhies*, 128 Or. App. 289, 875 P.2d 521 (1994); *In re M.M.D.*, 662 A.2d 837 (D.C. App. 1995); *Elisa B. v. Superior Court*, 37 Cal. 4th 108, 117 P.3d 660 (Cal. 2005); *K.M. v. E.G.*, 37 Cal.4th 130, 117 P.3d 673 (Cal. 2005); *In re Parentage of L.G.*, 122 P.3d 2 (Wa. 2005); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012); *Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013); *T.M.H. v. D.M.T.*, 129 So.3d. 320 (Fla. 2013); *In re Guardianship of Madelyn B.*, 166 N.H. 453 (2014); *In re Adoption of a Minor*, 471 Mass. 373, 29 N.E.3d 830 (Mass. 2015); *McLaughlin v. Jones*, 243 Ariz. 29, 401 P.3d 492 (2017); *LeFever v. Matthews*, 336 Mich. App. 651, 971 N.W.2d 672 (2021);

and *Pueblo v. Haas*, 986 N.W.2d 149 (Mich. 2023). In addition, NCLR attorneys have participated in drafting and revising the Uniform Parentage Act, model ABA parentage statutes, and many state parentage laws.

NCLR has specific expertise in the issues presented by this case—namely, how to apply state laws addressing the respective rights and obligations of sperm donors, on the one hand, and intended parents who use assisted reproduction to have children, including many lesbian couples, on the other. NCLR also has deep expertise in how to interpret and apply state law provisions relating to the use of assisted reproduction in a manner that is consistent with their purpose, history, and text; and with the important public policies underlying these laws. Additionally, NCLR has specific experience grappling with the implications of *Obergefell v. Hodges* and *Pavan v. Smith* in cases involving the parentage rights of married same-sex couples under state law. NCLR hopes its contributions will assist the Court by providing information and context about the issues implicated in this case and the real-world impact this case could have on thousands of Minnesota families.

III. Argument

A. The district court's decision conflicts with Minnesota's strong policy of providing clarity, certainty, and stability for children born through assisted reproduction.

The district court's decision conflicts with Minnesota's strong policy of providing clarity, certainty, and stability for all children born through assisted reproduction. This case is governed by 257.62, subd. 5, which the Minnesota Legislature enacted in 2006 to provide a clear statutory framework to determine the parentage of *all* children born through assisted reproduction.

Unlike 257.56, which addressed only "artificial insemination," with the 2006 amendment to 257.62 the Legislature broadened the scope of the Minnesota Parentage Act ("MPA") to cover all forms of "assisted reproduction." Similarly, rather than address only the use of assisted reproduction by married couples under physician supervision, the Legislature addressed all "sperm donors" and "ovum (egg) donors," without any further qualification as to the type of assisted reproduction process used, the marital status of those using it, or whether a physician is involved. On its face, section 257.62, subdivision 5(c) applies to all gamete donors and expressly bars them from asserting parentage of any children born as a result of their donation. By failing to apply this straightforward law, the district court thwarted the Legislature's codification of a clear public policy to broaden the MPA to cover all uses of gamete donation in this state.

The Legislature's intent to amend Section 257 to protect a wide array of children born through assisted reproduction is clear and reflects the Legislature's increasing awareness and understanding of assisted reproduction over the 25 years between the enactment of the narrower section 257.56 and the enactment of section 257.62, subdivision 5(c). Assisted reproduction is widely used in the United States and Minnesota by diverse people and families for myriad reasons—an estimated three-quarters of a million people used donated sperm from 2015-2017 alone. Rachel Arocho et al., *Estimates of Donated Sperm Use in the United States: National Survey of Family Growth 1995–2017*, 112 Fertility & Sterility 718, 718 (2018).

By disregarding the plain language of the current MPA, the district court's decision will deter families from using known donors for fear that their parent-child relationships will never be secure. As other courts have recognized, "the advantages of choosing a known donor are significant." *In Interest of R.C.*, 775 P.2d 27 (Colo. 1989); *see also Jhordan C. v. Mark K.*, 179 Cal.App.3d 386, 394 n. 7 (Cal. Ct. App. 1986) (citing Patricia Kern & Kathleen M. Ridolfi, *The Fourteenth Amendment's Protection of a Woman's Right To Be a Single Parent Through Artificial Insemination By Donor*, 7 Women's Rts. L. Rep. 251, 256 (1982)). Deterring the use of known donors serves only to harm Minnesota families who wish to benefit from these advantages, contrary to the Legislature's intent. There is no legitimate reason to

limit the plain language of the MPA in this way, and doing so defeats the purpose for which it was enacted.

B. The decision below conflicts with Minnesota's strong public policy of protecting the stability of married families, including those of same-sex spouses, as *Obergefell* and Minnesota law require.

The district court's decision is an unprecedented intrusion on the privacy and stability of marital families. To the best of NCLR's knowledge, no prior Minnesota case has permitted a paternity suit by a man who, by his own admission, *donated* sperm to a married couple under any circumstances—much less when the spouses are listed as the legal parents on the child's birth certificate, have raised and supported the child since birth in an intact marriage, and jointly oppose the donor's claim. The district court's decision dramatically undermines Minnesota's "legislatively established public policy favoring presumptions of legitimacy and the preservation of family integrity." *In re Estate of Jotham*, 722 N.W.2d 447, 455 (Minn. 2006).

Minnesota law has long held that children born to a married couple are presumed to be the legal offspring of both spouses. *See*, *e.g.*, *Haugen v. Swanson*, 219 Minn. 123, 16 N.W.2d 900 (1944); *see also Kelly v. Cataldo*, 488 N.W.2d 822, 827 n. 7 (Minn. Ct. App. 1992) (noting that the marital presumption has "ancient roots"). That presumption, codified in the MPA, has never rested exclusively on biology; rather, it reflects the State's compelling interest in the privacy, stability,

and autonomy of marital families, regardless of genetic ties. *See*, *e.g.*, *Haugen*, 219 Minn. at 127 (holding that the marital presumption is rooted in "respect for the sanctity of the marital relationship"); *Kelly*, 488 N.W.2d at 827 n. 7 ("[T]he legislature clearly creates occasions where [the marital] presumption precludes recognition of blood relationships."). In the past, the marital presumption was premised on protecting children from the stigma and legal disadvantages of illegitimacy; today, it is rooted in concerns about "intruding on marriages and families" and "coincides with constitutional proscriptions on state interference in the private realm of family life." *Kelly*, 488 N.W.2d at 827 n. 7. And as the Supreme Court has made clear, Minnesota must apply the protections for marital privacy equally to same-sex couples and their children. *See Obergefell v. Hodges*, 576 U.S. 644 (2015).

The Minnesota Legislature's recognition of the continued importance of the marital presumption—and its independence of biology—are evident throughout the MPA. For example, a birth mother's husband may disavow paternity based on the absence of a genetic tie only within a limited window of time, even if he subsequently discovers that he is not a child's biological father. Minn. Stat. § 257.57, subd. 1(b). Similarly, the MPA permits third parties to challenge the marital presumption based on an assertion of biological paternity only in "limited

circumstances." *Kelly*, 488 N.W.2d at 827 n. 7.[2] When alleged fathers have challenged those limitations, courts have upheld them. *See, e.g.*, *Markert v. Behm*, 394 N.W.2d 239 (Minn. Ct. App. 1986) (noting that courts have not recognized "a constitutionally protected interest in a determination of [a man's] parental status . . . with respect to a child conceived and born during the marriage and cohabitation of the child's mother to and with another who has not disavowed the child's legitimacy") (internal citation omitted); *see also Michael H. v. Gerald D.*, 491 U.S. 110, 124 (1989) (plurality opinion) (holding that "our traditions have protected the marital family" against paternity challenges by alleged biological fathers). In such cases, the government has a strong interest in safeguarding marital privacy and "protecting children from potentially harmful paternity suits." *Markert*, 394 N.W.2d at 244. These compelling public policies have long played a central role in Minnesota's strong protection of marital families, and they continue to do so today.

[2] Even when an alleged father meets the standing requirements to bring a paternity claim, biology does not necessarily trump the marital presumption. "A determination under this subdivision [concerning positive genetic test results] that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under section 257.55, subdivision 2." Minn. Stat. § 257.62, subd. 5(c). In this case, however, there is no need to resolve competing presumptions because as a sperm donor, Respondent does not have standing to bring a paternity claim.

The district court deprived Appellants and their child of these vital protections simply because Appellants are same-sex spouses who used donated sperm to conceive a marital child. As Appellants' brief explains, Respondent had no standing to challenge the marital presumption under any provision of the MPA. He did not assert any sexual contact with the birth mother, as required by Minn. Stat. § 257.62, subd. 1. Instead, he acknowledged that he provided his gametes as a donor to enable Appellants to conceive a marital child. As such, he is *expressly* excluded from asserting "biological or legal" paternity under Minn. Stat. § 257.62, subd. 5(c). For the same reason, he cannot rely on Minn. Stat. § 257.55, subd. 1(d), both because that provision requires him to assert that he is a "biological" parent, which Minn. Stat. § 257.62, subd. 5(c) expressly precludes, and because his relationship with the child (by his own account) has been that of a known donor, not a parent.[3]

By disregarding these statutory limitations, the district court's decision infringed upon Appellants' marital autonomy and deprived their child of the security and stability that Minnesota law provides to other marital children. If that ruling is permitted to stand, Appellants and their child must not only undergo

[3] As Appellants note, as a matter of law, the facts asserted in Respondent's brief below do not establish a parent-like relationship. To hold otherwise would effectively convert all known donors who have even limited contact with a child into holding-out fathers with standing to assert paternity.

genetic testing (a significant burden), they must also undergo litigation that imperils the child's intact family and threatens her relationship with the only two people she has known, loved, and depended upon as her parents. These destabilizing harms undermine Minnesota's strong public policy of protecting marital families.

In *Obergefell*, the U.S. Supreme Court recognized that the marital presumption is one of the most important benefits of marriage. The Court found that excluding same-sex couples from marriage unconstitutionally deprived their children of "the recognition, stability, and predictability that marriage offers" and caused them to "suffer the stigma of knowing their families are somehow lesser." *Obergefell*, 576 U.S. at 668. In contrast, the right to marry "safeguards children and families." *Id*. at 667. It "affords the permanency . . . important to children's best interests[.]" *Id*. at 668. *Obergefell* requires that Minnesota provide these benefits to all marital children regardless of their parents' gender, as do many provisions of Minnesota's own public policy and law.

Minnesota has long been a leader in requiring equal treatment of LGBT people and families. Minneapolis was the first city in the nation to expressly ban discrimination against transgender people.[4] In 1993, the Minnesota Human Rights

[4] Jess Braverman & Christy Hall, *The Groundbreaking Minnesota Human Rights Act in Need of Renovation*, Hennepin Lawyer, Mar./Apr. 2020 (Amicus Addendum 1).

Act became one of the first state antidiscrimination statutes in the nation to protect against discrimination on the basis of sexual orientation and gender identity.[5] Minnesotans defeated an anti-same-sex marriage ballot amendment in 2012 and in the next legislative session the Minnesota Legislature enacted marriage equality.[6] *See* Minn. Stat. Chap. 517. More recently, the Minnesota Legislature has amended the Human Rights Act to provide broader anti-discrimination provisions for LGBT people and also adopted legislation to protect health care for transgender people.[7]

The district court decision runs afoul of these well-established protections for LGBT people and families. The practical implication of the district court's decision was to deprive Appellants and their child of the same recognition, stability, predictability, and permanence that other marital couples and children in Minnesota enjoy. Rather than enabling the child "to understand the integrity

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[5] Minnesota Department of Human Rights, *The Take Pride Act (HF 1655/SF 1886)*, https://mn.gov/mdhr/assets/Take%20Pride%20Act_tcm1061-566906.pdf (last visited Mar. 14, 2024) (Amicus Addendum 4).

[6] Minnesota Legislative Reference Library, *Minnesota Issue Guide: Same Sex Marriage in Minnesota*, Minnesota Legislature, https://www.lrl.mn.gov/guides/guides?issue=samesexmarriage#:~:text=The%20state%20of%20Minnesota%20legalized,marriage%20on%20August%201%2C%202013 (July 2022).

[7] *See* Amicus Addendum 4 (fact sheet on Take Pride Act); Dana Ferguson, '*You Belong Here': Minnesota House Passes Trans Health Refuge Bill*, MPR News (Mar. 24, 2023 5:19 AM), https://www.mprnews.org/story/2023/03/24/you-belong-here-minnesota-house-passes-trans-health-refuge-bill.

and closeness of [her] own family and its concord with other families in their community," *Obergefell*, 576 U.S. at 668, the district court's ruling does just the opposite—requiring Appellants to defend their marital family in a way that marks them as "lesser" and threatens their child's understanding of her family and her place in the world.

C. The district court's decision also conflicts with Minnesota's strong policy of protecting established parent-child bonds.

Like other states, Minnesota seeks to protect children from the significant harms of disrupting established parent-child bonds. That strong public policy is reflected throughout the MPA, which seeks to promote certainty, permanence, and stability in parent-child relationships. As discussed above, Minnesota protects children by establishing clear rules regarding the legal parentage of children born through assisted reproduction and precluding donors from asserting either biological or legal parentage, with the goal of ensuring that the legal parentage of a child born through assisted reproduction can be established at the time of the child's birth. Minnesota also protects children by establishing a strong presumption that a child born to married parents is the legal child of both spouses and by strictly limiting both the circumstances under which that presumption may be challenged and who may challenge it. These are bedrock principles of Minnesota family law.

Rather than respecting these public policies by applying the plain text of the MPA, the district court's decision strains to interpret the relevant statutes in a way that improperly elevates biology over all other considerations, notwithstanding the contrary mandates of the MPA, creating needless uncertainty and instability for parents who use known sperm donors to have a child. That error is especially harmful for same-sex couples, many of whom rely on assisted reproduction to have children, and for their children, who need and deserve the same stability and predictability as other children.

As both the Supreme Court and Minnesota courts have long recognized, the parent-child relationship is unique and rests not on biology alone, but rather on the enduring bond and "emotional attachments that derive from the intimacy of daily association." *Smith v. Org. of Foster Families for Equal. & Reform*, 431 US 816, 844 (1977); *see also Lehr v. Robertson*, 463 US 248, 256 (1983) (describing the "intangible fibers that connect parent and child"). While many parent-child relationships include a biological tie, "[n]o one would seriously dispute that that a deeply loving and interdependent relationship between an adult and a child in [their] care may exist even in the absence of blood relationship." *Smith*, 431 U.S. at 844, quoting *Wisconsin v. Yoder*, 406 US 205, 231-233 (1972); *see also*, *e.g.*, *Tubwon v. Weisberg*, 394 N.W.2d 601, 604 (Minn. Ct. App. 1986) (recognizing that a non-biological parent can "establish[] a parent-child bond . . . identical to the bond

formed by biological parents with their children"). "Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Caban v. Mohammed*, 441 US 380, 397 (1979) (Stewart, J., dissenting); *see also R.B. v. C.S.*, 536 N.W.2d 634, 637 (Minn. Ct. App. 1995) (holding that "the mere existence of a biological link" does not give rise to a constitutionally protected parental right).

As social science research has overwhelmingly shown, the preservation of these formative attachments is essential to a child's healthy development and lifelong wellbeing. In fact, "the single most important factor in promoting positive psychological, emotional, and behavioral well-being is having a strong, secure attachment to their primary caregivers." *Vibrant and Healthy Kids: Aligning Science, Practice, and Policy to Advance Health Equity* 240 (Jennifer E. DeVoe, Amy Geller & Yamrot Negussie eds., 2019). Unsurprisingly, research has shown that children born to same-sex couples through assisted reproduction develop the same strong bonds with both parents as children who are biologically related to both parents. "Unlike adults, children have no psychological conception of relationship by blood tie until quite late in their development." Linda D. Elrod, *A Child's Perspective of Defining a Parent: The Case for Intended Parenthood*, 25 BYU J. Pub. L. 245, 249 (2011). These studies of same-sex parent families "reinforce the finding of children's non-genetic sense of kinship [when] . . . for these children, parentage

is determined not so much by biological connection but by the way they were raised, and especially, the fact that they were planned and wanted all along." Maya Sabatello, *Disclosure of Gamete Donation in the United States*, 11 Ind. Health L. Rev. 29, 63 (2014).

Because maintaining that secure attachment is so critical to a child's development, disrupting an established parent-child bond causes serious harm. *See*, *e.g.*, *Developmental Issues for Young Children in Foster Care*, 106 Pediatrics 1145, 1145 (2000) (describing children's "need for continuity with their primary attachment figures" as "paramount"). In particular, "[o]nce an adult has lived with and cared for a child for an extended period of time and become that child's psychological parent, removing that 'parent' from the child's life results in emotional distress in the child and a setback of ongoing development." Rebecca L. Scharf, *Psychological Parentage,* Troxel*, and the Best Interests of the Child*, 13 Geo. J. Gender & L. 615, 634 (2012).

This enduring parent-child bond is not the same as a relationship between a child and a known donor. While children may benefit from having contact with a known donor, just as they may benefit from having contact with grandparents, other relatives, or close family friends, that does not transform such a relationship into the unique bond that arises from a parent's assumption of the daily commitment of raising, supporting, and caring for a child. The donor here is

known to the child as a donor, not a parent. In stark contrast, the child has known and depended upon the birth mother and her spouse as a parent for the child's entire life.

There can be no serious dispute that a legal decision severing the child's exclusive legal tie with the birth mother and her spouse would cause emotional distress and put her at risk of significant developmental harm. Even if Respondent's claim were ultimately denied, the decision to permit his paternity action to proceed itself calls the permanence of that parent-child relationship into question and forces Appellants and their child to endure the stress of litigation concerning the most fundamental foundation of their family: their legally recognized parent-child bonds. As this Court has recognized, the MPA limits the circumstances in which a parental presumption may be challenged precisely in order to protect children from this type of harm. *See Markert*, 394 N.W.2d at 244 (noting Minnesota's interest in "protecting children from potentially harmful paternity suits").

IV. Conclusion

The parent-child relationship is unique; it is not the same as a relationship between a known donor and a child. The donor here does not dispute that he is known to the child as a donor, and not a parent. In stark contrast, the child has

known and depended upon the birth mother and her spouse as parents for the child's entire life. Disrupting that bond would be harmful, and Minnesota law does not permit children to be subjected to that type of harm. The district court's decision conflicts with established Minnesota policies regarding marital children, children born through assisted reproduction, and the importance of protecting established parent-child bonds—principles that the Minnesota Legislature has guaranteed apply equally to children of same-sex parents. Amicus NCLR urges the Court to reverse and to direct the district court to dismiss Respondent's complaint with prejudice.

Dated: March 14, 2024

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CERTIFICATE OF COMPLIANCE
WITH MINN. R. CIV. APP. P. 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 4,228 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word for Microsoft 365, the word processing system used to prepare this Brief.

s/ Katherine S. Barrett Wiik
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