

No. 18-1431

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In The  
**Supreme Court of the United States**

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FRANK G.,

*Petitioner,*

v.

JOSEPH P. AND RENEE P.-F., ET AL.,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The Appellate Division,  
Supreme Court Of New York,  
Second Judicial Department**

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**MOTION FOR LEAVE TO FILE AS  
AMICUS CURIAE AND BRIEF OF THEM  
BEFORE US IN SUPPORT OF PETITIONER**

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**MOTION OF THEM BEFORE US  
FOR LEAVE TO FILE  
BRIEF AS AMICUS CURIAE**

Them Before Us seeks leave under this Court's Rule 37.2 to file the attached brief as amicus curiae in support of Petitioner Frank G. Petitioner has consented to the filing of this brief. Respondents did not respond to amicus' separate attempts to seek their consent, and therefore they neither consented to nor opposed the filing of this brief.<sup>1</sup>

Amicus has extensive knowledge about the child custody issues in this case as seen through the children's eyes. As part of its mission, Amicus advocates on behalf of children in custody and adoption proceedings through research, analysis, and educating the public about current family-related legislation and laws. Amicus' expertise in the sociology and psychology of children conceived through artificial reproductive technology will help the Court evaluate the importance of the issues in this case. For these reasons, Them

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<sup>1</sup> Correspondence of Amicus' contact with the parties about consenting to this filing have been lodged with the Clerk.

Before Us should be granted leave to file the attached brief.

Respectfully submitted,

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**INTEREST OF AMICUS<sup>1</sup>**

Them Before Us is a nonprofit organization dedicated to advancing children’s rights through education, research, and legislative action. We passionately advocate for those hit hardest by intent-based parenthood—the children. As a leading voice for biological parent-child relationships, we believe our expertise on intent-based parenthood puts us in a special position to argue why this Court should grant this petition for certiorari. The Court has yet to consider whether children have a fundamental liberty interest in a relationship with their biological parents. As we argue below, the Court should use this case as a vehicle to clarify whether intent-based parenthood implicates, and infringes, children’s fundamental right to be known and loved by their biological parents.

Amicus’ support for biological parentage reflects its commitment to marriage, the foundation of our society. A mother-and-father marriage both provides children with a protective shelter and reduces economic reliance on the state. But deeper still is our belief that children who have a relationship with their biological parents flourish from the love, warmth, and security flowing from the natural family. Because all children, including Petitioner’s children, are entitled to a legal system that ensures their right to their biological family, the Court should grant the petition for certiorari.



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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution to prepare and submit this brief.

## SUMMARY OF ARGUMENT

Like most custody disputes, this is a challenging case. The facts involve a biological father, a former same-sex partner, and a surrogate mother. The law features “fundamental liberty interests” and the often-criticized “best interest of the child” standard. And if this Court grants certiorari, it will likely be pulled by two competing and legitimate concerns. On one hand, natural parents have a fundamental liberty interest in the care and custody of their children. On the other hand, that parental liberty interest is balanced with the State’s role as *parens patriae*. Either way, the outcome of this legal tug-of-war is clear: the victor will be awarded two trophies—the children. This Court should grant certiorari because the children should not be the trophies. They should be the winners.

This Court has long observed that natural parents have a fundamental liberty interest in the care, custody, and control of their children. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982). No doubt Petitioner has a fundamental liberty interest in parenting his children. But this right should not guide the Court’s decision to grant review. Instead, the Court should grant review to clarify that children have an enumerated right to be known and loved by their biological parents.

Children are at the mercy of adult decision-making in a world that increasingly believes the highest pursuit is happiness and personal fulfillment. Because of emerging reproductive technology, skyrocketing divorce rates, rising cohabitation, and novel definitions of marriage, the parent-child relationship has shifted in recent years from one based on biology to one based on “intent.” Whether it is forcing an unwanted child out of existence through abortion or manufacturing a “very wanted” child into existence through reproductive technologies, children are increasingly viewed as objects to fulfill adult desires. This shift consequently has eroded a child’s fundamental right to a relationship with their biological mother and father.

In theory, courts developed the best interest standard to protect the liberty interests of the minor child. Too often, however, the traditional best interest standard has been applied to serve adults’ desires rather than children’s needs. Jurisprudential concerns and children’s justice entitle Petitioner’s children—and all children in custody disputes—to a determination that acknowledges and protects their liberty interest in the natural bond with their biological parents.



## ARGUMENT

### I. The Court Should Clarify Children’s Fundamental Liberty Interest in Their Biological Family Bonds

Amicus starts from the premise—long recognized by this Court—that parents have a fundamental liberty interest in the custody and care of their children. See *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000); see also *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that the right of parents to “establish a home and bring up children” and “to control the education of their own” is a fundamental interest). A parent’s liberty interest stems from this Court’s understanding that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.” *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503 (1977) (Powell, J., plurality opinion). And because “family” implies biological relationships, “[t]he ‘biological connection’ is itself a relationship that creates a protected interest.” *Lehr v. Robertson*, 463 U.S. 248, 272 (1983) (White, J., dissenting) (citation omitted).

While every fit parent has a fundamental right to raise his or her child, the state as *parens patriae* may intervene if it would be in the “best interest of the child.” All fifty states have recognized the best interests of the child as the standard for resolving custody disputes.<sup>2</sup> In custody cases, New York requires that

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<sup>2</sup> See Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*,

“the court must determine what is in the children’s best interests and what will best promote the children’s welfare and happiness.” *Margaret M.C. v. William J.C.*, 972 N.Y.S.2d 396, 399 (Sup. Ct. 2012). In deciding the children’s best interests, New York courts consider, among other factors, “the ability of each parent to provide for the child’s emotional and intellectual development, \* \* \* the relative fitness of the respective parents, and the effect an award of custody to one parent might have on the child’s relationship with the other parent.” *Yearwood v. Yearwood*, 935 N.Y.S.2d 578, 580 (2011).

Courts apply the best interests of the child standard under three basic presumptions. One, courts presume that parents act in their children’s best interests. Two, they presume that it is in the children’s best interest to live with their natural parents. And three, they presume that preserving the parent-child relationship is in the children’s best interest.

Yet in recent years custody cases have devolved into “a bipolar struggle between the parents and the State over who has final authority to determine what is in a child’s best interests.” *Troxel*, 530 U.S. at 86 (Stevens, J., dissenting). As Justice Stevens observed in *Troxel*, “[t]here is at a minimum a third individual, whose interests are implicated in every case to which the [best interest] statute applies—the child.”

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10 J. L. & FAM. STUD. 337, 370 (2008) (“Today, every state has a statute requiring that the child’s best interests be considered whenever decisions regarding a child’s placement are made.”).

*Id.* Paradoxically, this Court has never clarified “the nature of a child’s liberty interests in preserving established familial or family-like bonds[.]” *Id.*

The Court should do so here. At the center of this case are two children’s fundamental rights to love, and be loved, by their biological father. But Petitioner’s children have no say here. They cannot file their own brief. And they cannot tell the court what they long for. They are the most important party in this legal triad, yet they must be silent. The children deserve to be heard. After all, the Court has acknowledged that children have constitutional rights. *See Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.”). It should follow, then, that “to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.” *Troxel, supra*, at 86.

To be sure, Amicus acknowledges that “domestic relations” is “a virtually exclusive province of the States.” *Sosna v. Iowa*, 419 U.S. 393, 404 (1975); *In re Burrus*, 136 U.S. 586, 593–594 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”); *cf. De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956) (holding that legally recognizing a man as a child’s father is a function of

state law). But Amicus equally believes that this Court should provide guidance when a rapidly changing legal landscape implicates fundamental liberty interests.

And this Court holds it “cannot leave to the States the formulation of the authoritative laws, rules, and remedies designed to protect people from infractions by the States of federally guaranteed rights.” *Chapman v. California*, 386 U.S. 18, 21 (1967). It is thus precisely at moments like this—when more and more adults are claiming parental status to the children’s detriment—that this Court’s intervention is most needed.

## **II. “Intent-based” Parenthood is about What Adults Want, Not What Children Need**

“What had not been fathomed exists today.” *In re Roberto D.B.*, 923 A.2d 115, 122 (Md. 2007). Advances in reproductive technology (“ART”), the legal recognition of same-sex marriage, and the rise in both divorce and cohabitation have transformed American family structures. Consequently, state courts are facing “a confounding welter” of custody claimants with no biological connection to the children. Jeffrey Shulman, *The Constitutional Parent: Rights, Responsibilities, and the Enfranchisement of the Child*, Yale University Press (2014). “To add to the legal bewilderment, each of the claimants speaks the language of rights, seeking as they do to capture familiar parental entitlements, however novel the arguments for parental status they advance.” *Id.*



To resolve these unprecedented parentage issues, courts have legitimized “intent-based” parenthood—that is, “the party who intended to bring about the birth of the child should be declared the legal parent.” Melanie B. Jacobs, *Applying Intent-Based Parentage Principles to Nonlegal Lesbian Coparents*, 25 N. ILL. U. L. REV. 433 (2004-2005). Proponents describe intent-based parenthood as “an alternative means of establishing parentage,” such as “genetic, gestational, or marital presumption parenthood[.]” Richard F. Storrow, *Parenthood by Pure Intention: Assisted Reproduction and the Functional Approach to Parentage*, 53 HASTINGS L. J. 597 (2002).

Intent-based parenting is profoundly flawed. It reflects the desires of adults, not the longings of children. It means that children belong to whichever adults can acquire them. And it creates a culture, at least legally, in which there is no expectation that children should be raised by their own mother and father. When the basis for parenthood is no longer biological but “intentional,” it endorses scenarios such as King Solomon’s, where children are swapped and traded, cut and pasted into any and every conceivable adult arrangement.

Advocates for intent-based parenthood contend it does not matter who the children’s parents are so long as they are “loved.” But from the child’s perspective, it takes more than “love” to make a family. *See infra* Part III. That is because biology is a primary factor in whether children will be, in fact, loved. Thus, it is in children’s best interest for courts to anchor parenthood

claims in biological connection, not “by granting rights to more and more parental claimants or by creating new varieties of constitutionally protected parenthood.” See Shulman, *supra*, at 205.

Many family arrangements exist today. But how children come into being, and the foundational components for child health—stability, a biological connection with both parents, and dual-gender influence—do not change. “The relationship between children and their biological parents is intimate, permanent, and identity constituting. It defines the biological aspect of the child’s identity—for if the child had different biological parents, he would not be the same person; indeed he would not exist at all.” Melissa Moschella, *To Whom Do Children Belong? A Defense of Parental Authority*, Public Discourse (2015). This Court’s review is the only hope for restoring sociological and biological realities in family law disputes.

### **III. Children Long for their Biological Parents Regardless of Their Family Structure**

Recent studies and surveys show a widespread longing for biological families. For example, the genealogy products and services market, which includes at-home genetic testing kits, is valued at around \$3 billion.<sup>3</sup> Entire Facebook groups are devoted to reuniting

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<sup>3</sup> See *Genealogy Products and Services Market Forecast, Trend Analysis & Competition Tracking: Global Market Insights 2018 to 2024*, Fact.MR (2019).

adoptees with their first families.<sup>4</sup> And large numbers of donor offspring conceived through anonymous sperm donations are searching for and contacting their donor relations.<sup>5</sup> These observations point to a simple truth: People yearn to know about their biological connections because it gives them a sense of their identity, of who they are and where they came from.

Here is the perspective of a donor offspring who searched for her biological siblings:

I am an only child, with step-siblings and one halfsibling. . . . I suppose the best description of my reasoning is curiosity, but it is also, if I can put this poetically, a call from my blood. I know there is a certain affinity within genetic family that is different from any other.<sup>6</sup>

In the parental context, these observations reflect the understanding that the biological bond between a parent and a child is unique. In the heart of a child, not all adults are created equal. There are two people children innately *long to know* and *be known by*—their biological mother and father.

To be sure, Amicus does not suggest that children being raised by intentional parents do not enjoy stability

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<sup>4</sup> See, e.g., Oscar Schwartz, *DNA Search Angels: the Facebook "Detectives" Who Help Reunite Families*, *The Guardian* (Apr. 29, 2019, 1:00 PM), <http://bit.ly/2R4MrPU>.

<sup>5</sup> Vasanti Jadva, et al., *Experiences of Offspring Searching for and Contacting Their Donor Siblings and Donor*, *Reproductive BioMedicine Online* (2010).

<sup>6</sup> *Id.*

and love. To illustrate the point, here is the testimony of a woman “well-loved” by her biological mother and social father yet who longed for the love of her sperm-donor father:

Now I know. I have a biological father I’ll most likely never know anything about . . . Does he care that he has a biological daughter who has sang in musicals on stage?.. Who wonders every time she passes a stranger, “Is that him?” Who wonders if he’s where her love of travel & Tudor history come from? Where her nose comes from? Where SHE comes from?<sup>7</sup>

Children raised by heterosexual married parents speak of the longing and loss they experience as a result of not being raised by their biological father:

Today I’m overwhelmed with sadness. It is Thanksgiving. I’ve spent the days surrounded by sweet people who love me. My family. The ones who helped raise me. The ones who will claim me. I love them. I’m thankful to be with them. We’re having a lovely time. But I miss my biological dad. I wish I could call him today. I wish I knew him well. I wish I could hug my bio brother, or send a quick, silly text to him. What is he doing today? I look around the room at boys who look just like their daddies. Fathers and children who all have the same smirky giggle. I’ll never sit in the same room with him and know if we walk the same. I didn’t get to grow up reading the books he

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<sup>7</sup> Anonymous, *My Story*, Anonymous Us Project (Feb. 6, 2019), <http://bit.ly/2wPyQms>.

loves, or hearing his calming voice when I'm tired, or sharing a love for the way his mother, my grandmother, cooks. I cannot ever know these things. In the name of generosity, he gave me away.<sup>8</sup>

At age 32, a woman found out the man who raised her, with whom she was close, was not her biological father. She writes:

I spent about six weeks mourning the loss of biological connection to my dad . . . I felt as though the foundation of who I was had cracked and I no longer knew who I was . . . After the shock of “losing” my dad, I realized that there was a man out there who I did look like who fathered me. I then began to mourn the loss of a man who I never even knew existed until a few weeks earlier . . . Who was he? Did he ever think about me? How many times did he “donate”? Did he have children that he raised? Was he even still alive?<sup>9</sup>

This longing to be known by one's biological parents exists regardless of the parents' sexual orientation. For children, it is not about their parent's *sexual identity*. It is simply about *biology*.

I'm a 15 year old girl and I have two moms.  
They're wonderful and the best parents my

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<sup>8</sup> Anonymous, *Holidays*, Anonymous Us Project (Feb. 5, 2017), <http://bit.ly/2WDQaKu>.

<sup>9</sup> Stephanie Blessing, *I Found Out I Was Conceived through a Sperm Donor . . . I Mourned the Loss of a Man I Never Knew Existed*, Them Before Us (May 15, 2017), <http://bit.ly/2F14CBi>.

sister and i could have asked for. But still, I want a dad. I'm not saying that I'm against gay marriage or gay parenting. I just want a dad, and I feel bad for saying that.<sup>10</sup>

Millie Fontana was raised by lesbian parents. She notes:

Growing up, I wanted a father. . . . I felt it within me that I was missing a father before I could even articulate what a father was. I knew that I loved both of my parents, but I could not place my finger on what it is I was missing inside myself. When I hit school I started to realize through observing other children and their loving bonds with their fathers and I was missing out on something special. I was lied to throughout school; I was told I didn't have a father . . . it was very difficult for me to affirm a stable identity because of this. And my behavioral and emotional stability suffered greatly because of it . . . <sup>11</sup>

Heather Barwick reflects on her experience being parented by a non-wedded, same-sex couple:

I grew up surrounded by women who said they didn't need or want a man. Yet, as a little girl, I so desperately wanted a daddy. It is a strange and confusing thing to walk around

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<sup>10</sup> Anonymous, *I Wish I Had a Dad*, Anonymous Us Project (Oct. 2, 2015), <https://anonymousus.org/i-wish-i-had-a-dad>.

<sup>11</sup> Millie Fontana, *Growing Up With Two Mothers Forced Me to Be Confused About Who I Was and Where I Fit in the Scheme of the World*, Them Before Us (Apr. 11, 2017), <https://thembeforeus.com/millie-fontana>.

with this deep-down unquenchable ache for a father, for a man, in a community that says that men are unnecessary. There were times I felt so angry with my dad for not being there for me, and then times I felt angry with myself for even wanting a father to begin with.<sup>12</sup>

The following stories share insight on how donor-conceived children feel about their genetic relations.

Well, my father is a anonymous sperm donor. If you had asked me a year ago how I felt about him, I would have felt mild curiosity and excitement. I wasn't really concerned about him at all. But now I miss him like crazy. It sounds weird I know, how can you miss someone you never knew? But I feel it all the same. I'm also furious (and I know this sounds bad) at my mother. How dare she willingly deny me the right to know him.<sup>13</sup>

Elizabeth Howard discovered by chance when she was a teenager that she and her two siblings were donor conceived.

I did not know, until I lost it, how much my sense of identity was rooted in my knowledge of who my parents were. Incidentally, discovering I was donor-conceived was in many ways a relief, since by that point "Dad" had been imprisoned for indecent assault of a

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<sup>12</sup> Heather Barwick, *Dear Gay Community: Your Kids are Hurting*, *The Federalist* (Mar. 17, 2015), <http://bit.ly/31o5RUR>.

<sup>13</sup> Anonymous, *I Miss Him*, Anonymous Us Project (Mar. 29, 2017), <https://anonymousus.org/i-miss-him>.

child; but even though I was liberated from a genetic link with him, I was also cast adrift from who I thought I was, and from all the stories that make up a family's sense of identity.<sup>14</sup>

Even in situations of abandonment where children are later placed for adoption in loving households, they often long to know their biological parents' identities. According to one study, about 70 percent of adult adoptees felt "moderate to significant degrees of uncertainty and ambiguous loss" over their birth parents.<sup>15</sup>

Hearing these stories invites one question: What will future children who are arbitrarily denied a relationship with their biological parents say if courts continue to downplay the biological connection in the parent-child relationship? When children no longer have a right to their mother and father, they become items to be cut and pasted into any and every adult arrangement, awarded to whichever adults can acquire them. Children become, as Rabbi Gilles Bernheim states, "objects of rights" rather than "subjects of rights." Gilles Bernheim, *Homosexual Marriage, Parenting, and Adoption*, First Things (March 2013).

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<sup>14</sup> Elizabeth Howard, *Part 1: I Don't Have a Father, or the Sense of Identity That Goes With One*, Them Before Us (Jan. 3, 2018), <https://thembeforeus.com/elizabeth-howard-part-1>.

<sup>15</sup> Patrick F. Fagan, *Adoption Works Well: A Synthesis of the Literature*, Family Research Council (2010), <https://downloads.frc.org/EF/EF14J57.pdf>.



#### **IV. Biology Gives Children their Identities**

Biological connection matters to children. Not only does it provide them with the adults who are most likely to love and care for them, but it also gives them access to their biological identity. According to children's rights authority Melissa Moschella:

The biological parent-child relationship is uniquely intimate and comprehensive, at least from the child's perspective. A child's relationship to his biological parents is the closest of that child's human relationships. It is identity-determining. To be born of different parents is to be an entirely different person. This, combined with the observation that receiving proper care is crucial for the child's current and future well-being, implies that biological parents are the ones with the strongest obligation to ensure that their child is well-cared-for . . . Since biological parents have an intimate relationship with their children, it makes sense to claim that children can miss the love of absent biological parents even if they are well-loved by others . . .<sup>16</sup>

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<sup>16</sup> Melissa Moschella, *To Whom Do Children Belong? A Defense of Parental Authority*, Public Discourse (2015), <https://www.thepublicdiscourse.com/2014/02/11620/>.

According to one study, donor offspring struggle to assimilate with their families.<sup>17</sup> They also experience feelings of loss about not knowing their donor.<sup>18</sup>

In short, facts and evidence show that “intent-based” parenthood is dangerous for children because it needlessly deprives them of their biological identity. It is not in the best interests of the child for courts and authorities to grant a claim of parenthood without a biological or adoptive basis.

## **V. Biology is Crucial to Children’s Safety and Wellbeing**

As discussed above, biology is crucial to a child’s social and psychological identity. Biology is relatedly critical to children’s long-range development. For example, adults respond differently to children who are not biologically related to them. “Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents.” Kristin A. Moore, et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children & What Can We Do about It?*, Child Trends Research Brief (June 2002); cf. Sara McLanahan & Isabel Sawhill,

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<sup>17</sup> See, e.g., A.J. Turner & A. Coyle, *What Does It Mean to be a Donor Offspring? The Identity Experience of Adults Conceived by Donor Insemination and the Implications for Counselling and Therapy*, 15 Human Reprod. 2041, 2042 (2000).

<sup>18</sup> *Id.*

*Marriage and Child Wellbeing Revisited: Introducing the Issue*, Future of Children (Fall 2015) (“Most scholars now agree that children raised by two biological parents in a stable marriage do better than children in other family forms across a wide range of outcomes.”).

To be sure, there are committed non-biological caretakers. But studies show that unrelated cohabitating adults are less invested in and protective of the children in their care. This phenomenon is known among evolutionary biologists as the “Cinderella Effect.”<sup>19</sup> The following stories reflect this unfortunate reality.

Tara was always troubled that her father didn’t love her as she wished he would. When she discovered he was not her biological father, his distance and volatility suddenly made sense:

And now I knew that I HAD known, somehow, all along. Because the main emotion I felt in this loss of the only dad I had ever known was relief, relief because I had never loved him as I thought I should, as I knew in my heart that he did not treat me as the treasured daughter I longed to be. I had always wondered why. And now I knew.<sup>20</sup>

Nick was donor-conceived and suffered alienation and abuse at the hands of his social father. He notes:

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<sup>19</sup> See, e.g., Robert Burgess & Alicia Draais, *Beyond the “Cinderella Effect,”* Human Nature (1999).

<sup>20</sup> Tara, *The Father in My House Was Not Really My Dad*, Them Before Us (Nov. 15, 2018), <https://thembeforeus.com/tara>.

We were forced into a relationship that was a fallacy from the start and that's probably a big part of why it didn't feel real to either one of us. I like to imagine that [my social father] would have been a better father to me and I would have been a better son to him if we had actually been biologically related. . . . We never got along very well and sadly I have very few fond memories of him.<sup>21</sup>

Allison experienced the “Cinderella Effect” in full force once her stepfather and mother bore their own children:

[My stepfather] took on four kids that were not his own and tried the best he knew how to raise us. Unfortunately he was often verbally abusive, ill-tempered and reactionary. . . . My mom was put in the position of protecting us almost daily from his verbal diatribes. My stepfather and my mother ended up having three children together as well and I saw my stepfather turn into a loving, adoring biological father. He was a different, changed man . . . toward his own children . . . the verbal abuse toward us and the unconditional love toward his biological children made me long for a father who loved me unconditionally.<sup>22</sup>

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<sup>21</sup> Nicholas Isel, *Maybe If the Sperm Bank Had Sent [My Dad] a 'Good Son,' He Would Still Be Alive*, Them Before Us (May 26, 2017), <https://thembeforeus.com/nicholas-isel>.

<sup>22</sup> Allison, *My Step Father Was a Different Changed Man . . . Towards His Own Children*, Them Before Us (Apr. 12, 2017), <https://thembeforeus.com/allison>.

## **VI. Only Biology and Adoption are Bases for Parenthood**

Historically, parenthood has been established through a genetic connection to the child or by adoption. Because biological connection grants children their identity and is the best predictor of their health and safety, it should serve as the primary basis of parenthood. In the rare and unfortunate case in which biological parents are found to be unfit, abusive or neglectful, adoption is the only other appropriate basis for parenthood that protects children's rights.

So what is the difference between adoption and intent-based parenthood? First, we start with the similarities. Both adoption and intent-based parenthood involve loss for children. In both situations, a child is living with at least one non-biological parent. And both donor-conceived children and adopted children are more likely to struggle with diminished outcomes than children raised by biological parents.

But the similarities, for the most part, stop there. The most significant difference is adoption supports children's rights while intent-based parenthood violates them. This can be explained in three major points.

*First*, adoption mends a wound. For the child, adoption begins with great loss. Adoption is a creature of statute, a process that establishes a legally recognized parent-child relationship where one otherwise did not exist. Put another way, adoption is a just society's attempt to mend the child's loss of his biological

relations. Adoptive parents are not responsible for the child's wound but are seeking to heal it. On the other hand, intent-based parenthood inflicts a wound. With third-party reproduction and alternative family structures, adults intentionally produce children with the express objective of raising them without one (or both) biological parent. While adoptees are living with adults who are seeking to heal their loss, donor-conceived children are living with adults who are responsible for it.

*Second*, in adoption cases, the child is the "client." The guiding principle of adoption is that children deserve parents. When adoption is done right, not every adult has a child placed with them, but every child is placed with loving parents. In adoption, the adults sacrifice for the child. In contrast, with "intent-based" parenthood, the adults are the clients. The fertility industry—and an ever-growing number of state courts—operate under the mistaken notion that adults have a right to a child, even if the adults are not biologically related and have undergone no screening or vetting. In "intent-based" parenthood, the child sacrifices for the adult.

*Third*, adoption is sometimes necessary. Intent-based parenthood is not. Historically, a child unable to be raised by his parents was a tragic circumstance. For that reason, the State rigorously screens adopting parents to ensure the child will indeed be safe, loved, and accepted in his new family. Nowadays, however, courts grant parental authority to unrelated adults based solely on the adult's desire to be a parent. It is not in

the best interest of the child for courts to grant a claim of parenthood without a biological or adoptive basis.

The trend toward “intent-based” parenthood is grievous. It is never necessary to give a child to an unrelated adult without requiring that adult to undergo vetting, training, and supervision. Yet these days, it is normalized and even encouraged.

In short, both adoption and intent-based parenthood involve life-long loss for children. But adoption supports children’s rights because it seeks to remedy brokenness by fulfilling a child’s right to loving parents. Intent-based parenthood, however, violates children’s rights because it inflicts brokenness: it purposefully denies a child’s right to their biological parents. A just society cares for orphans. It doesn’t create them.



**CONCLUSION**

This Court should clarify a child's fundamental liberty interest in a parent-child biological bond. For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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