**STATE OF MICHIGAN**

**IN THE COURT OF APPEALS**

KYRESHA LEFEVER,

Plaintiff-Appellee

Court of Appeals No. 353106

Lower Court No. 2019-103263-DP

v

LANESHA MATTHEWS,

Defendant-Appellant.

---

# AMICI CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, CENTER FOR REPRODUCTIVE RIGHTS, CENTER FOR GENETICS AND SOCIETY, AND PRO-CHOICE ALLIANCE FOR RESPONSIBLE RESEARCH

Jay D. Kaplan (P38197)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800

Taylor Brown
Leslie Cooper
American Civil Liberties Union Foundation
125 Broad Street, 18th Fl.
New York, NY 10004
(212) 549-2627

Attorneys for Amici Curiae

September 24, 2020

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Other Authorities**

**Rules**

## INTEREST OF AMICUS CURIAE[1]

The American Civil Liberties Union (ACLU) is a nationwide non-profit organization with over 1.7 million members. The American Civil Liberties Union of Michigan is the Michigan affiliate of the ACLU. Together, the ACLU and ACLU of Michigan are dedicated to defending civil rights and civil liberties, and have supported or litigated hundreds of cases in Michigan's state and federal courts as a plaintiff, on behalf of plaintiffs, and as amicus curiae. Among those cases litigated include the constitutional rights of autonomy in matters related to procreation, family relationships, and LGBTQ status.

The Center for Reproductive Rights is a global human rights organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the United States, the Center focuses on ensuring that all people have access to a full range of high-quality reproductive healthcare before, during, and after pregnancy. Since its founding in 1992, the Center has been involved in nearly all major litigation in the U.S. concerning reproductive rights in state and federal courts, including the U.S. Supreme Court.

The Center for Genetics and Society (CGS) is the leading U.S. public interest organization focused on ensuring a just and equitable future in which human biotechnologies benefit the common good. Since its founding in 2001 CGS has worked

[1] Pursuant to MCR 7.212(H)(3), amici state that no counsel for a party authored this brief in whole or in part, no counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than the amici curiae, their members, or their counsel made such a monetary contribution.

to raise awareness about the broad societal implications of human genetic and assisted reproductive technologies (ARTs); to encourage their responsible use and effective democratic governance; and to inform public, civil society, and policy conversations about them from a perspective grounded in social justice and human rights.

Pro-Choice Alliance for Responsible Research (PCARR) is an alliance of individuals and organizations active in the reproductive health, rights, and justice movements who are working at the intersection of women's health and rights and human biotechnology. PCARR works to promote democratic accountability, safety and social justice in biomedical research from a women's rights perspective.

Collectively, amici represent a broad and diverse base of stakeholders. As non-profit organizations that advocate on behalf of these stakeholders, amici have considerable interests in law and policy concerning the constitutional and legal rights of individuals, families, children, LGBTQ people, reproductive freedom and autonomy, and the important intersections that arise amongst these rights. Those intersections are at stake in this matter on appeal. Amici, in their respective capacities, are engaged with these issues on a day-to-day basis in a multitude of forums across law, policy, and society. Amici have worked to establish and expand many of the rights implicated in this matter, and continually work to protect them and promote progress.

As this case involves a novel, yet extremely important, issue for the state of Michigan, amici humbly offer our unique perspectives. These are perspectives that

have been shaped by decades of successful advocacy, rooted in law, and most importantly, grounded in the realities of the lives of hundreds of thousands of families and children, including many Michiganders.

## INTRODUCTION

The court below deemed a mother to be a legal stranger to her children solely because of the manner she and her former partner used to procreate. Ms. Matthews and Ms. Lefever together made the decision to bring children into the world and did so through co-maternity—a form of assisted reproduction in which one partner carries a child (or children in this scenario) conceived with the other partner's ova. Ms. Lefever provided the ova and Ms. Matthews carried and gave birth to their twin children. Despite the lower court's recognition that the couple intended to form a family together and both women functioned as parents to the twins, it interpreted Michigan law to deny legal parentage to Ms. Matthews solely because she is not genetically related to the children.

Amici agree with Ms. Matthews that the court's interpretation of state law was erroneous and that a proper reading of the law makes clear that Ms. Matthews is one of the twin's natural parents. They submit this brief to address the constitutional implications should the lower court's reasoning be accepted, resulting in parents and children like Ms. Matthews and the twins being denied the protections afforded to parent-child relationships simply because of the method of procreation used. The United States Constitution protects both the right to procreate and the right to maintain relationships that form between parents and children. By denying

recognition of Ms. Matthews's parental relationship with the twins and, thus, denying her access to the protections afforded to parents and children when families break up, solely because of the manner of procreation used, the lower court violated both Ms. Matthews and the children's rights under the due process and equal protection clauses of the Fourteenth Amendment.

It is hard to imagine any court reaching the same result had the case involved not two women, but rather, a heterosexual couple, where the woman gave birth to a child who was not genetically related to her, e.g. by using donor eggs. However, the court's reasoning—that a person who gives birth to a child who is not genetically related to her is not a parent—would apply equally to such families. Should that reasoning be accepted, countless children in both LGBTQ and heterosexual, cisgender parent families will lose the security of a legal relationship with a parent. Not only is there nothing in Michigan law that requires such an abhorrent result, but the Constitution forbids it.

Amici write in support of Ms. Matthews's relationship with her children, their relationship with her, and the constitutional principles undergirding those relationships. Every parent-child relationship is protected under the Constitution irrespective of factors like gender or sexual orientation or the use of assisted reproductive technology. Amici urge this court to reverse the decision below.

## ARGUMENT

### I. The United States Constitution Protects Individuals' Autonomy in Matters of Procreation and Child Rearing.

Every individual has the right, protected by the United States Constitution, to join together with another, married or unmarried, and form families. *Eisenstadt v Baird*, 405 US 438, 454 (1972). The Constitution protects "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Planned Parenthood of SE Pennsylvania v Casey*, 505 US 833, 851 (1992), citing *Carey v. Population Serv Int'l*, 431 US 678, 685 (1977).

The decision to procreate or not, and how, are fundamental liberty interests protected against unwarranted governmental intrusion. *Eisenstadt*, 405 US at 453. This is part of the long-recognized right to bodily integrity and autonomy over decisions concerning one's body. *Casey*, 505 US at 849 (citations omitted). The rights tethered to the liberty to procreate and to bodily autonomy do not yield because of the method of procreation, such as the use of assisted reproductive technology ("ART"). See *DMT v TMH*, 129 So3d 320, 338 (Fla, 2013) ("Although the right to procreate has long been described as 'one of the basic civil rights' individuals hold, advances in science and technology now provide innumerable ways for traditional and non-traditional couples alike to conceive a child and, we conclude, in so doing to exercise their 'inalienable rights ... to enjoy and defend life and liberty, [and] to pursue happiness.'") (internal citations omitted).

The Supreme Court has also recognized that the relationships that form between parents and their children are constitutionally protected. *Quilloin v Walcott*,

434 US 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"). Indeed, the Court has said that the bond between parent and child, one of the oldest fundamental liberty interests, *Troxel v Granville*, 530 US 57, 65 (2000), "is far more precious than any property right." *MLB v SLJ*, 519 US 102, 102 (1996), quoting *Santosky v Kramer*, 455 US 745, 758-759 (1982). A parent's right to "the companionship, care, custody, and management of his or her children" is an important interest that "undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v Illinois*, 405 US 645, 651(1972).

The constitutional rights that protect families safeguard the interests of the children as well as the parents. *See, e.g.*, *Santosky v Kramer*, 455 US 745, 760 (1982) ("the child and his parents share a vital interest in preventing erroneous termination of their natural relationship"); *Duchesne v Sugarman*, 566 F2d 817, 825 (CA 2, 1977) (the "right to the preservation of family integrity encompasses the reciprocal rights of both parent and children. It is the interest of the parent in the 'companionship, care, custody and management of his or her children,' and of the children in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association,' with the parent.") (internal citations omitted).

This constitutional protection extends beyond the traditional nuclear family, *Moore v City of E Cleveland, Ohio*, 431 US 494 (1977) (grandmother who was raising her grandsons had constitutionally protected relationship with them); beyond families headed by married couples, *Stanley v Illinois*, 405 US 645 (1972) (unwed

father's right to seek custody of child protected); and beyond biological parent-child relationships, *Smith v Org of Foster Families for Equality and Reform*, 431 US 816 (1977) (certain foster parent-child relationships could be protected by Constitution). Since at least *Prince v Massachusetts*, 321 US 158 (1944), the Supreme Court has recognized that it is not biological parents alone whose interest in their relationships with their children is entitled to constitutional protection. The Court treated the relationship between Sarah Prince and Betty Simmons (Sarah's "custodian" and aunt) as a constitutionally protected parent-child relationship. *Prince*, 321 US at 159, 169; *Smith*, 431 US at 843 n 49 (citing *Prince* as an example of parental due process rights extending beyond biological parents).

The core of the family interest protected by the Due Process Clause of the Fourteenth Amendment, according to the Supreme Court, derives not only from genetics or biology[2], but also from the emotional bonds that develop between family members as a result of shared daily life. *Lehr v Robertson*, 463 US 248, 261 (1983). As the Court explained in *Smith*, 431 US at 844:

> [T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children . . . as well as from the fact of blood relationship. [Internal citations omitted.]

[2] Amici are not suggesting that Ms. Matthews is not biologically related to the twins. She is by virtue of having carried and given birth to the children. However, the constitutional protection afforded to parent-child relationships is not limited to biological parent-child relationships.

See also *Moore*, 431 US at 504-506 (recognizing that the constitutional right to parental autonomy extends to relatives who take on the responsibility of child rearing).

There are many adults who function as parents in every way ("de facto parents") to children, despite no genetic or other currently recognized legal basis for parentage. Their parentage and relationship with their children nonetheless fall within the gamut of the constitutional protections afforded to parent-child relationships. *Smith*, 431 US at 844; see, e.g., *In re Parentage of LB*, 122 P3d 161, 178 (Wash, 2005) (explaining that de facto parents "have a 'fundamental liberty interest[]' in the 'care, custody, and control'" of the child); *VC v MJB*, 748 A2d 539, 550 (NJ, 2000) (explaining that the "strong interest" both the child and a de facto parent have in their parent-child relationship "for constitutional as well as social purposes, lies in the emotional bonds that develop between family members as a result of shared daily life").

Ms. Lefever is legally one of the twins' natural parents biologically, because she carried them and gave birth to them, because she raised them, and because she loves them and has had a relationship with them their entire life. Their relationship exemplifies the reality that parenthood is diverse, multi-faceted, and extraordinarily precious. The United States Constitution recognizes this and protects these important relationships between parents and children, regardless of the manner in which they arose.

## II. Denying Ms. Matthews the Status of "Natural Parent" Violates Ms. Matthews and the Children's Due Process and Equal Protection Rights.

The circuit court's decision below, refusing to recognize Ms. Matthews as a natural parent of the twins, violates the constitutional rights of Ms. Matthews and the twins. The circuit court held that because Ms. Matthews has no genetic tie to the children, she is not a "natural parent" under Michigan law. Because Ms. Matthews became pregnant through the use of her partner's ova, the circuit court relegated her to the third-party status of "surrogate carrier" despite recognizing the couple's intention of raising the twins together. That denies both Ms. Matthews and the twins the protection of their parent-child relationships guaranteed by the Constitution.

Consistent with constitutional requirements, Michigan law provides parents with significant protection of their relationships with their children, whether the family unit is intact or has dissolved. It gives parents the right to spend time with their children through custody or visitation arrangements and to make decisions about the care of their children, and where necessary, access to the courts for assistance in protecting and securing those rights.

As one of the twin's parents, Ms. Matthews is entitled to those protections and now requires them to maintain her parental relationship with her children after raising them for seven years. The circuit court's order violates Ms. Matthews's parental rights by relegating her to the status of a surrogate carrier. Under Michigan law (as interpreted by the circuit court), Michigan parents can access the courts to petition for custody and visitation and have those claims evaluated on the best

interest of the child(ren) only when parentage is established by genetics, adoption, or when a parent is afforded the presumption of natural parentage due to marriage. Because Ms. Matthews conceived the children using her partner's ova and, thus, is not genetically related to them, the circuit deemed that fact to prohibit recognizing her as a natural parent. Per the court's order, Ms. Lefever enjoys all of a natural parent's presumptions for custody and visitation, but Ms. Matthews—who is deemed a non-parent—carries a high burden to demonstrate a right to custody or any visitation with the children, threatening Ms. Matthews's relationship with her children and their relationship with one of their mothers.

Declining to recognize Ms. Matthews's and her children's constitutionally protected parent-child relationship and, thus, excluding them from the mechanisms that protect such relationships when families break up, violates their constitutional guarantees of due process and equal protection.

### A. Because Ms. Matthews and Ms. Lefever Brought the Twins Into the World With the Intent to Raise Them Together as a Family and Did So, the Due Process Clause Requires that Ms. Matthews Be Treated as a "Natural Parent" Under Michigan Law Regardless of the Method Used to Procreate.

The circuit court's decision below recognizes Ms. Matthews's clear intentions, commitment, and contributions to the twins as their mother. The circuit court recognized that Ms. Matthews and Ms. Lefever were in a romantic relationship; that they jointly decided to have children; that they agreed Ms. Lefever would supply the ova and Ms. Matthews would become pregnant and carry; that they intended to raise the children together as a family; and that they did so for the first seven years of the

children's lives. The court further recognized that after Ms. Matthews and Ms. Lefever's relationship broke down, they continued to jointly raise the children and Ms. Matthews had overnight visitation with the children.

Notwithstanding these salient facts, the circuit court incorrectly applied a surrogacy framework to Ms. Matthews and Ms. Lefever's reproductive method to create their family and refused to recognize Ms. Matthews as one of the natural parents of the twins.[3] The circuit court's decision below is not only an erroneous reading of Michigan law, but also violates the constitutional rights of Ms. Matthews and the twins.

As discussed above, the constitutional protection afforded to parent-child relationships is not limited to genetic parent-child relationships. Because Ms. Matthews and Ms. Lefever jointly brought the twins into the world via co-maternity with the intention of raising them together, and did so, Ms. Matthews and the children are entitled to the protections the United States Constitution provides for parent-child relationships. The method of reproduction used by the couple is not a basis to deny recognition of Ms. Matthews's parentage and, thus, deny her and the children the constitutional and legal protections to which they are entitled.

### B. Treating Families Formed by a Particular Form of Reproduction Differently by Denying them the Protections Afforded to Parent-Child Relationships Violates the Equal Protection Clause.

[3] Treating Ms. Matthews as a surrogate was erroneous not only because the couple had the intention that both partners would be parents of the children and together raised the children jointly, but for the additional reason that Michigan law does not enforce surrogacy agreements.

### i. Differential Treatment That Burdens Fundamental Rights Like Procreation or Child Rearing Is Subject to Heightened Scrutiny.

It is a well-established rule of equal protection law that a classification that creates differential access to a fundamental right is subject to strict scrutiny and can be upheld only if it is narrowly tailored to achieve a compelling governmental interest. See, e.g., *Zablocki v Redhail*, 434 US 374, 383-390 (1978) (since the right to marry is fundamental, state law that limits access to marriage for non-custodial parents with court-ordered child support obligation is subject to close scrutiny); *Police Dep't of Chicago v Mosley*, 408 US 92 (1972) (since ordinance that prohibited all pickets near schools except for labor pickets constituted differential access to the right to free speech, strict scrutiny was applied).

The state cannot create an exclusive system for accessing certain fundamental constitutional rights, including the right to maintain parent-child relationships, and then ban someone who is entitled to those rights from using that system, without a compelling reason. In *MLB v SLJ*, 519 US 102 (1996), the Supreme Court held that the "State must provide access to its judicial processes" in the context of termination of parental rights because "a fundamental interest is at stake"– maintaining a parent-child relationship. See also *Little v Streater*, 425 US 1, 13-17 (1981) (state must pay for blood test sought by indigent defendant contesting paternity suit because at issue was the creation of a parent-child relationship). Similarly, in *Boddie v Connecticut*, 401 US 371, 375-377 (1971), the Supreme Court held that since a civil action is the only way to end a marriage, and marriage is a fundamental right,

Connecticut could not effectively keep socioeconomically disadvantaged people from obtaining divorces by charging filing and service fees. "[G]iven the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving the relationship," due process "prohibit[s] a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." *Id.* at 374.

By refusing to recognize Ms. Matthews as one of the twin's natural parents because of the method of procreation she and her former partner used and, thus, denying her access to the courts to protect her right to custody and visitation, the decision of the court below burdened her access to the fundamental right to maintain her constitutionally protected parent-child relationships and is subject to strict scrutiny.

#### ii. Treating Children Differently Based on the Circumstances of Their Birth is Subject to Heightened Scrutiny.

The circuit court's order is subject to heightened equal protection scrutiny for the additional reason that it subjects the twins to differential treatment based on the method of reproduction used by their parents. Because their parents conceived them through co-maternity, the twins are denied the rights that come with being recognized as the children of one of their parents, including the ability to have those relationships protected after family dissolution; material benefits such as the right to family health insurance through a parent's employer and the right to social security survivor benefits; and the psychological security of their family relationships being recognized.

The Supreme Court has long recognized that laws discriminating against children based on the circumstances of their birth are unconstitutional unless the distinction is "substantially related to an important governmental objectives." *Clark v Jeter*, 486 US 456, 461 (1988); see, e.g., *Trimble v Gordon*, 430 US 762 (1977) (striking down statute that prohibited non-marital children from inheriting from their father unless their parents had married); *Weber v Aetna Cas & Surety Co*, 406 US 164 (1972) (striking down workman's compensation statute that denied benefits to unacknowledged non-marital children); *Levy v Louisiana*, 391 US 68 (1968) (striking down statute that prevented non-marital children from bringing a wrongful death tort action); see also *Plyler v Doe*, 457 US 202 (1982) (excluding undocumented immigrant children from public education violated the children's equal protection rights). This long-held principle applies with equal force to children like the twins in this case who have been denied the protection of a legally recognized relationship with one of their parents solely based on their parents' chosen method of procreation.

### iii. Treating Children Differently Based on Their Parents' Sexual Orientation Is Subject to Heightened Scrutiny.

Additionally, the circuit court's order is subject to heightened scrutiny to the extent it subjects the twins to differential treatment based on the sexual orientation of their mothers. The Equal Protection Clause of the Fourteenth Amendment mandates that similarly situated persons are not treated differently simply because of their membership in a class. See *City of Cleburne, Tex v Cleburne Living Ctr*, 473 US 432, 439 (1985) ("The Equal Protection Clause…is essentially a directive that all persons similarly situated should be treated alike"). All sex-based classifications are

subject to heightened scrutiny and violate the equal protection clause unless the State can provide an "exceedingly persuasive" justification for the classification. See *United States v Virginia*, 518 US 515, 531 (1996). "[D]iscrimination based on homosexuality or transgender status necessarily entails discrimination based on sex." See *Bostock v Clayton Co, Ga*, 140 S Ct 1731, 1746 (2020).[4] "It is now beyond dispute that same-sex couples can provide loving, supportive families for children." *See Obergefell v Hodges*, 576 US 644, 668 (2015).

The judgment below raises these equal protection concerns. The facts of this case implicate a method of procreation and family formation exclusive to lesbian, gay, bisexual, and transgender parents. Procreation by one partner providing the ova and the other partner getting pregnant and carrying the child to term can only arise in a relationship between two cisgender women, two transgender men, or a cisgender woman and a transgender man. All of these scenarios involve at least one lesbian, gay, bisexual or transgender parent.

In cases that have involved a heterosexual couple where a cisgender woman carried a child conceived by ova that were not her own (e.g., when the couple has used

[4] Federal circuit and district courts have also held that apart from constituting sex discrimination, sexual orientation and transgender status are subject to heightened scrutiny for the additional reason that they satisfy the Supreme Court's standard for suspect classifications. See, e.g., *Karnoski v Trump*, 926 F3d 1180, 1201 (CA 9, 2019); *Stone v Trump*, 400 F Supp 3d 317, 355 (D Md, 2019); *MAB v Bd of Educ of Talbot Co*, 286 F Supp 3d 704, 720–721 (D Md, 2018); *Grimm v Gloucester Co Sch Bd*, 302 F Supp 3d 730, 749–750 (ED Va, 2018); *FV v Barron*, 286 F Supp 3d 1131, 1145 (D Idaho, 2018); *Evancho v Pine-Richland Sch Dist*, 237 F Supp 3d 267, 288 (WD Pa, 2017); *Bd of Educ v US Dep't of Educ*, 208 F Supp 3d 850, 872–874 (SD Ohio, 2016); *Adkins v City of NY*, 143 F Supp 3d 134, 139 (SDNY, 2015); *Norsworthy v Beard*, 87 F Supp 3d 1104, 1119 (ND Cal, 2015).

an egg donor), courts have recognized the parental rights of the birth mother. See, e.g., *In re CKG*, 173 SW3d 714 (Tenn, 2005).[5] Differential treatment of LGBTQ parents and their children on the basis of the parents' sexual orientation or transgender status is discrimination on the basis of sex and sexual orientation in violation of the Equal Protection Clause, as there is no justification for such treatment, much less an exceedingly persuasive one.

#### iv. Denying the Twins the Protection of Their Relationship With One of Their Parents Because They Were Conceived via Co-Maternity Serves No Governmental Interest, Let Alone a Compelling One.

There is no government interest—let alone a compelling or important one—that is furthered by excluding a constitutionally protected parent-child relationship like that of Ms. Matthews and the twins from the mechanism the State has established to recognize and protect parent-child relationships solely because of the method of their conception. The twins were brought into the world because Ms. Matthews and Ms. Lefever together made the decision to have children and used assisted reproductive technology to do so. The twins have grown up having two parents who love and care for them. It serves no conceivable government interest to deny them the protections afforded to other children when families break up to ensure their continued relationships with and support from both parents.

[5] In that case, an unmarried heterosexual cisgender couple had three children through anonymously donated ova, fertilized by the father's sperm and carried by the mother, and the father contested legal maternity on the basis that the mother had no genetic tie to the children. The Tennessee Supreme Court held that the mother was a legal parent.

## III. The Circuit Court's Decision Has Far Reaching Implications for Families Formed Through Donor Ova or Sperm.

If the circuit court's reasoning is adopted on appeal, such a rule could be disastrous for parents and children throughout the state. The ruling here—that someone who gives birth to a child to whom she is not genetically related is not a parent—would apply to many couples that depend on egg donors to form their families. And it would seem to mean that men are not fathers to children born to their wives or partners when the couple uses donor sperm.

There are many individuals and couples who conceive children using assisted reproduction or assisted reproductive technologies, including intrauterine insemination of sperm, in vitro fertilization (where ova are fertilized by sperm outside of the body and embryos are implanted in the uterus), and frozen embryo transfers. For many families, donor sperm and/or ova are needed to procreate. This can be due to clinical infertility, which is defined as the inability to become pregnant or sustain a pregnancy after 12 months of regular unprotected sexual intercourse or inseminations of sperm,[6] or because a single individual or LGBTQ couple seeks to conceive a child and requires donor sperm and/or ova to reproduce.

It has been estimated that between 1987 and 2015, at least 1 million babies have been born through IVF and other ART.[7] Many of these children were conceived

[6] See https://www.who.int/reproductivehealth/topics/infertility/definitions/en/.

[7] See https://www.pennmedicine.org/updates/blogs/fertility-blog/2018/march/ivf-by-the-numbers.

using donor sperm or ova.[8] All children conceived using donor sperm or ova are not genetically related to at least one of their parents. Under the circuit court's analysis, all of these children would be deemed legal strangers to at least one of their parents. No matter the fact that their parents intended to bring them into this world and the children know them as their parents and depend on them for love and support. Such a result would leave countless children without the security and protection of a legal parent-child relationship with one of their parents (and in some cases, their only parent) and, thus, vulnerable to the severance of these important relationships and the loss of material benefits to which they are entitled through their parents. This catastrophic outcome would violate well-established constitutional principles that protect the relationships between children and their parents.

## CONCLUSION

For the foregoing reasons, amici urge the Court to reverse the decision of the circuit court and recognize Ms. Matthews as a natural parent of her children.

Respectfully submitted,

/s/ Jay D. Kaplan
Jay D. Kaplan (P38197)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan

[8] See, e.g., Gerkowicz et al, *Assisted reproductive technology with donor sperm: national trends and perinatal outcomes*, 2018 Am J Obstet Gynecol 218(4): 421 <https://pubmed.ncbi.nlm.nih.gov/29291411/>; United States Centers for Disease Control and Prevention, *Assisted Reproductive Technology National Summary Report* (2016) (donor eggs or embryos made up 9.2% of ART cycles, meaning they were used 24,300 times by couples and individuals seeking to have children) <https://www.cdc.gov/art/pdf/2016-report/ART-2016-National-Summary-Report.pdf>.

2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800

Taylor Brown
Leslie Cooper
American Civil Liberties Union Foundation
125 Broad Street, 18th Fl.
New York, NY 10004
(212) 549-2627

Attorneys for Amici Curiae

Dated: September 24, 2020