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Accordingly, the order of the Appellate Division should be affirmed, with costs.

Judge Kaye's Dissenting Opinion

The Court's decision, fixing biology as the key to visitation rights, has impact far beyond this particular controversy, one that may affect a wide spectrum of relationships—including those of long-time heterosexual stepparents, "common law" and non-heterosexual partners such as involved here, and even participants in scientific reproduction procedures. Estimates that more than 15.5 million children do not live with two biological parents, and that as many as eight to ten million children are born into families with a gay or lesbian parent, suggest just how widespread the impact may be. . . .

But the impact of today's decision falls hardest on the children of those relationships, limiting their opportunity to maintain bonds that may be crucial to their development. The majority's retreat from the courts' proper role—its tightening of rules that should in visitation petitions, above all, retain the capacity to take the children's interests into account—compels this dissent. . . .

Most significantly, Virginia M. agrees that, after long cohabitation with Alison D. and before A.D.M.'s conception, it was "explicitly planned that the child would be theirs to raise together." It is also uncontested that the two shared "financial and emotional preparations" for the birth, and that for several years Alison D. actually filled the role of co-parent to A.D.M., both tangibly and intangibly. In all, a parent-child relationship—encouraged or at least condoned by Virginia M.—apparently existed between A.D.M. and Alison D. during the first six years of the child's life.

While acknowledging that relationship, the Court nonetheless proclaims powerlessness to consider the child's interest at all, because the word "parent" in the statute imposes an absolute barrier to Alison D.'s petition for visitation. That same conclusion would follow, as the Appellate Division dissenter noted, were the co-parenting relationship one of ten or more years, and irrespective of how close or deep the emotional ties might be between petitioner and child, or how devastating isolation might be to the child. I cannot agree that such a result is mandated by section 70, or any other law. . . .

City of Dallas and Mack Vines v. Mica England, 846 S.W. 2d 957 (Tex. 1993)

Mica England, a lesbian, was refused the right to apply for a job with the Dallas police force on the grounds that the state's sodomy laws made lesbianism illegal. As a result, the Texas Court of Appeals ruled that the state's sodomy laws were unconstitutional:

Mica England, appellee, sued the State of Texas, the City of Dallas, and Mack Vines, challenging the constitutionality of the Texas statute criminalizing private sexual relations between consenting adults of the same sex, Tex. Penal Code Ann. §21.06 (West 1989), and seeking to enjoin the Dallas Police Department's

policy of not hiring lesbians and gay men because they violate this criminal statute. . . . The trial court now held the statute unconstitutional and enjoined the City of Dallas and its police chief both from enforcing the statute and from denying employment in the police department to lesbians and gay men solely because they violate the statute. . . .

Background

England applied for a position with the Dallas Police Department in 1989. She was invited to interview for the position and, when asked about her sexual orientation, she responded truthfully that she was a lesbian. The interviewer then informed England that under the police department's hiring policy her homosexuality made her ineligible for employment. England sued the police department, Vines (the police chief under whose tenure she was denied employment) and the State, challenging the constitutionality of the hiring policy and the criminal statute underlying the hiring policy. She also sought injunctive relief, damages, and attorney's fees. . . .

After granting the State's plea to the jurisdiction, the trial court granted partial summary judgment, declaring section 21.06 of the Penal Code unconstitutional, and enjoining the police department and its police chief from enforcing the statute and from denying employment in the police department based solely on an applicant's admission of violating section 21.06 or of being homosexual. . . .

The State as sovereign is immune from suit absent its consent. E.g., *Missouri Pac. R.R. v. Brownsville Navigation Dist.*, 453 S.W.2D 812, 813 (Tex. 1970). However, actions of a state official that are unconstitutional, illegal, wrongful, or beyond statutory authority are not immunized by government immunity and a suit seeking relief from the official's conduct is not one against the state. . . .

Conclusion

We affirm the trial court's judgment in all respects.

BAEHR, ET AL. V. LEWIN, 93, C.D.O.S. 3657

In this famous Hawaii case, a group of same-sex couples filed suit demanding the right to engage in same-sex marriages. The Hawaii Supreme Court ruled that the state constitution did not guarantee this right, while also pointing out that the state's ban on same-sex marriage might be illegal, because it violated the state's constitutional protection against discrimination on the basis of sex. The court decision remained pending while the state legislature revised the state constitution to make the court case moot. Following is an excerpt from the original court decision:

Background

On May 1, 1991, the plaintiffs filed a complaint for injunctive and declaratory relief in the Circuit Court of the First Circuit, State of Hawaii, seeking, *inter*