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January 20, 2009

VIA E-MAIL AND REGULAR MAIL

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Re: In Re S.J.L., et al. Rita Goodman v. Siobhan LaPiana
Case No. 91996
Court of Appeals of Ohio, Eighth District, Cuyahoga County, Ohio

Dear Counsel:

Enclosed please find (1) Motion Of The National Association Of Social Workers And The National Association Of Social Workers, Ohio Chapter, For Leave To File A Brief As *Amici Curiae* and (2) Brief Of *Amici Curiae* The National Association of Social Workers And The National Association of Social Workers, Ohio Chapter, In Support Of Appellee Rita Goodman, which were served today in the above-referenced appeal.

Very truly yours,



Daniel B. Miller

DBM:njf
Enclosure

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John E. Schoonover, Esq.
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January 20, 2009
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**IN THE COURT OF APPEALS OF OHIO
EIGHTH DISTRICT
CUYAHOGA COUNTY, OHIO**

IN RE S.J.L., <i>et al.</i> ,	:	Case No. 91996
	:	
RITA GOODMAN,	:	
	:	
Petitioner/Appellee,	:	On Appeal from
	:	the Court of Common Pleas of
v.	:	Cuyahoga County, Ohio, Juvenile
	:	Division, Case Nos. CU07101304 &
SIOBHAN LaPIANA,	:	CU07101305
	:	
Respondent/Appellant.	:	

**MOTION OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS AND
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, OHIO CHAPTER,
FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE**

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The National Association of Social Workers (“NASW”) and The National Association of Social Workers, Ohio Chapter (“NASW, Ohio Chapter”), pursuant to App.R. 17, move the Court for leave to appear as *amici curiae* and file a brief in support of Appellee Rita Goodman urging affirmation of the trial court decision below. NASW and NASW, Ohio Chapter, contemporaneously tender their *amici curiae* brief for filing *instanter*.

Founded in 1955 as a non-profit professional association, NASW is the largest association of professional social workers in the world, with 145,000 members and 56 chapters throughout the United States and abroad (including NASW, Ohio chapter, which has 3,850 members). As part of its mission to improve the quality and effectiveness of social work practice, NASW promulgates professional standards and the NASW Code of Ethics, conducts research, provides continuing education, and advocates for sound public policies (including, among other things, by filing *amicus curiae* briefs in appropriate cases).

NASW seeks to establish high standards of social work practice, while strengthening and unifying the profession as a whole by maintaining professional standards of practice, promulgating sound social policies, and providing services that protect its members and enhance their professional status. In addition to these services, NASW supports and publishes social science research on topics significant to the social work profession, provides continuing education and professional conferences for its members, and enforces its Code of Ethics.

NASW also develops and adopts policy statements to encourage the development of organizational responses to various social issues. NASW’s family policy recognizes that gay and lesbian people are a part of existing families and provide important

caregiving to children, as well as other family members. In 1977, NASW adopted a policy on gay, lesbian, and bisexual issues, and subsequently revised and expanded that policy in 1987, 1993, 1996, and 2005. It provides that persons with same-gender sexual orientation should be afforded the same respect and rights as persons with other-gender sexual orientation. NASW is committed by its policy, as well as its Code of Ethics, to advancing policies and practices that will improve the lives of all children, including those raised in same-sex-parent families. Because NASW believes that child custody decisions should be made without consideration of sexual orientation, NASW and NASW, Ohio Chapter, submit their brief in support of the best interests of S.J.L. and J.K.L.—and all similarly situated children in the State of Ohio.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing Motion of The National Association of Social Workers and The National Association of Social Workers, Ohio Chapter, for Leave to File a Brief as *Amici Curiae* was served by regular First Class United States Mail, postage prepaid, this 20th day of January, 2009, on the following:

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CUYAHOGA COUNTY, OHIO**

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	:	Division, Case Nos. CU07101304 &
SIOBHAN LAPIANA,	:	CU07101305
	:	
Respondent/Appellant.	:	

**BRIEF OF AMICI CURIAE
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS AND
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, OHIO CHAPTER,
IN SUPPORT OF APPELLEE RITA GOODMAN**

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<i>Whaley v. Whaley</i> (4th Dist. 1978), 61 Ohio App.2d 111, 399 N.E.2d 1270.....	13

OTHER AUTHORITIES

American Academy of Pediatrics, Developmental Issues for Young Children in Foster Care (2000), 106 Pediatrics 1145	4, 8
American Academy of Pediatrics, Family Pediatrics: Report of the Task Force on the Family (2003), 111 Pediatrics 1541	6
American Academy of Pediatrics, Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents (2002), 109 Pediatrics 339.....	11
American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents (2002), 109 Pediatrics 341	5
American Psychoanalytic Association, Position Statement on Gay & Lesbian Parenting (May 16, 2002), http://www.apsa.org/aboutapsaa/positionstatements/gayand%20lesbianparenting/tabid/471/Default.aspx	11

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Kirkpatrick, Martha, et al., Lesbian Mothers & Their Children: A Comparative Study (1981), 51 <i>American Journal of Orthopsychiatry</i> 545.....	10

Konner, Melvin, <i>Childhood</i> (1991)	3
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National Association of Social Workers, <i>Policy Statement: Lesbian, Gay, & Bisexual Issues</i> , in <i>Social Work Speaks</i> (2006), 245	11
National Research Council & Institute of Medicine, <i>From Neurons to Neighborhoods: The Science of Early Childhood Development</i> (Jack P. Shonkoff & Deborah A. Phillips Eds.2000)	4-5, 8-9, 11
Patterson, Charlotte J., <i>Children of Lesbian & Gay Parents</i> (1992), 63 <i>Child Development</i> 1025	11
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Thweatt, Rayford W., <i>Divorce: Crisis Intervention Guided by Attachment Theory</i> (1980), 34 <i>American Journal of Psychotherapy</i> 240	8
Wallerstein, Judith S. & Kelly, Joan B., <i>Surviving the Breakup: How Children & Parents Cope with Divorce</i> (1980)	9
Wallerstein, Judith S. & Blakeslee, Sandra, <i>Second Chances: Men, Women & Children a Decade after Divorce</i> (1989)	9, 11

INTRODUCTION

Appellee Rita Goodman and Appellant Siobhan LaPiana became a committed couple in the early 1990s, and they lived together beginning in 1992. They decided to become parents, and they began making plans to accomplish this goal in 1996. After collectively deciding on a donor for artificial insemination who possessed several characteristics similar to Ms. Goodman, Ms. LaPiana became pregnant and gave birth to a boy, S.J.L., in 1997. Later, using the same donor, Ms. LaPiana again became pregnant and gave birth to another boy, J.K.L., in 2000. Ms. Goodman and Ms. LaPiana raised the two boys together as co-parents, and the boys recognized each woman as a mother. In families such as this, the children have a biological parent and a “psychological” or “de facto” parent—i.e., a person who is not the biological or adoptive parent of the children but who nonetheless has a fully-developed parental relationship with the children and who functions as parent in every respect.

Ohio law recognizes that a person who has functioned as a child’s parent may petition for an allocation of custody and visitation in the best interests of the child. Such a parent likewise may be obliged to provide financial support for the child. The trial court’s order determining custody and visitation in this case fully comports with Ohio legal principles protecting children’s relationships with those who serve as their parents.

As shown below, a large body of social science research supports the conclusion that children suffer significant and often irreparable harm when they are forcibly separated from adults who have functioned as their parents. This is true in cases where the parents are of the same gender, as well. The results of these peer-reviewed studies clearly demonstrate that the trial court acted in the best interests of S.J.L. and J.K.L. when it granted visitation rights to Rita Goodman.

Studies in developmental psychology consistently show that children form significant attachment bonds to their parents early in life. These bonds form whether the parents are biological, adoptive, or psychological, and whether the parents are same-sex or heterosexual. Empirical findings further establish that continuity of parent-child attachment bonds is critical to children's development, psychological health, and general well-being.

Consistent with these studies, the Supreme Court of Ohio has permitted Ohio's juvenile courts to grant custody and visitation in favor of gay and lesbian psychological parents like Rita Goodman when doing so is in the best interests of the children. The law of Ohio recognizes that psychological parents play a critical role in their children's development, especially with respect to the children's understanding and capacity for forming personal relationships, the children's ability to learn, and the formation of the children's sense of self. Further, these non-biological parents play an important role in providing for the children's financial security throughout the children's lives.

Ohio is not alone in this regard. Several other jurisdictions have accepted that the interests of children are best served by avoiding the severance of important attachment bonds, regardless of whether those bonds are formed with a biological or non-biological parent. The trial court's decree granting Ms. Goodman with visitation and parenting rights with respect to S.J.L. and J.K.L. coincides with the social sciences, Ohio law, and the positions of many other jurisdictions.

ARGUMENT

By granting Rita Goodman the right to visit and parent her children, the trial court acknowledged the children's best interests. As the trial court noted in its findings, Ms. Goodman, Ms. LaPiana, S.J.L., and J.K.L. functioned as a family unit during the

nearly 10-year relationship between Ms. Goodman and Ms. LaPiana. (Journal Entry 1, August 5, 2008.) “They celebrated birthdays and holidays as any family would” (id.), and the boys developed loving relationships with both women. Indeed, the boys’ guardian ad litem stated that “each woman holds a very special place in each boy’s life.” (Report of Guardian ad Litem 4, June 5, 2008.) The trial court recognized the importance of the boys’ longstanding connection to Ms. Goodman, and therefore determined that it was in their best interests to be able to maintain and develop their relationships through regular visits with Ms. Goodman.

Reversing the trial court’s determination of custody and visitation would not only rupture the children’s longstanding attachment bonds with one of their parents, but it would also deprive them of a second source of financial support. Because of the harm that could befall these children, it is critical that this Court recognize the significant emotional, developmental, and financial support that psychological parents provide—so that the best interests of S.J.L. and J.K.L. and similarly situated children can be appropriately considered.

I. ATTACHMENT BONDS BETWEEN CHILDREN AND THEIR GAY AND LESBIAN PSYCHOLOGICAL PARENTS SHOULD BE PROTECTED AND PRESERVED IF IN THE CHILDREN’S BEST INTERESTS.

A. The Formation of Parent-Child Attachment Bonds Is Critical to a Child’s Healthy Development.

Child development research overwhelmingly shows that children form strong bonds of attachment to their parents early in life and that these bonds grow stronger as children grow older. See, e.g., Melvin Konner, *Childhood* (1991) 84–87. See generally, e.g., John Bowlby, *Attachment* (2 Ed.1982).¹ An “attachment relationship” is defined as

¹ Copies of all of the studies cited within this brief are attached as an appendix.

a “reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver” through which a child forms his or her “concepts of self, others, and the world.” Beverly James, *Handbook for the Treatment of Attachment-Trauma Problems in Children* (1994) 1–2. The attachment relationship has profound biological, psychological, and sociological effects on a child’s development. Modern developmental psychology and neurology confirm that a child’s attachment relationships are the major environmental factor shaping brain development during the period of maximal brain growth. See Daniel J. Siegel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience* (1999) 67–120. Accordingly, attachment relationships create the central foundation of a child’s development. See *id.* Additional research findings illustrate that “what young children learn, how they react to the events and people around them, and what they expect from themselves and others are deeply affected by their relationships with parents.” Natl. Research Council & Inst. of Med., *From Neurons to Neighborhoods: The Science of Early Childhood Development* (Jack P. Shonkoff & Deborah A. Phillips Eds. 2000) 226. Among other things, attachment relationships “shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth.” *Id.* at 265; see also James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments* (2005), 46 *J. Child Psychology & Psychiatry* 115, 118; *Am. Acad. of Pediatrics, Developmental Issues for Young Children in Foster Care* (2000), 106 *Pediatrics* 1145, 1146 (“Attachment to a primary caregiver is essential to the development of emotional security and social conscience.”).

B. Attachment Relationships Develop Despite the Absence of a Biological or Legal Connection Between Parent and Child.

Attachment bonds invariably develop regardless of whether a parent and child are linked by biology or the formal adoption process. See Joseph Goldstein et al., *Beyond the Best Interests of the Child* (2 Ed.1979) 27 (concluding that the parent-child relationship can develop without reference to biology or formal adoption). In fact, a child can develop an attachment relationship with any adult who “on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child’s psychological needs for a parent, as well as the child’s psychical needs.” *Id.* at 98; see also Natl. Research Council & Inst. of Med., *supra*, at 234 (“[C]riteria for identification of attachment figures . . . [include] provision of psychical and emotional care, continuity or consistency in the child’s life, and emotional investment in the child.”). Any adult with whom a child has developed an attachment relationship is commonly referred to as a “psychological parent.” See Goldstein et al., *supra*, at 98; see also, e.g., *In re Clifford K.* (2005), 217 W.Va. 625, 642–43, 619 S.E.2d 138 (quoting *Beyond the Best Interests of the Child*’s definition of “psychological parent”).

It is the *quality* and *nature* of the interaction between parent and child, rather than any biological or legal connection, that creates and sustains these attachment relationships. See Ana H. Marty, et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-parental Caregiver* (2005), 175 *Early Child Dev. & Care* 271, 273; see also Am. Acad. of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents* (2002), 109 *Pediatrics* 341, 341 (“Children’s optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes.”). This finding extends to

attachment bonds between children and their same-sex parents. See Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families* (2003), 20 *Child & Adolescent Soc. Work J.* 159, 167–68 (finding, in a qualitative study of lesbian couples, that “quality of care was the salient factor in the establishment of an attachment hierarchy” and that “legal parent status” was not a “defining factor contributing to the attachment hierarchy”).

C. Sexual Orientation of Parents Is Irrelevant to the Development of Strong Attachment Bonds.

The research consistently shows that, in all relevant respects, lesbians and gay men parent as heterosexuals do. See, e.g., G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers & Gay Fathers*, in *Homosexuality: Research Applications for Public Policy* (John C. Gonsiorek & James D. Weinrichs Eds. 1991) 197, 198 (“The research is *extraordinarily clear* in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children.” (emphasis added)). Thus, not surprisingly, studies have concluded that a parent’s sexual orientation is immaterial to the formation and importance of children’s attachments, and children are just as likely to form close bonds with same-sex parents as with opposite-sex parents. See *Am. Acad. of Pediatrics, Family Pediatrics: Report of the Task Force on the Family* (2003), 111 *Pediatrics* 1541, 1550 (finding “that parental sexual orientation *per se* has no measurable effect on the quality of parent-child relationships”); A. Brewaeys et al., *Donor Insemination: Child Development & Family Functioning in Lesbian Mother Families* (1997), 12 *Human Reprod.* 1349, 1358 (finding the non-biological mother in lesbian families “was regarded by the child as just as much a ‘parent’ as the father in the heterosexual families”).

Moreover, the lack of a biological link does not impact the child's feelings for the same-sex parent. See Brewaeys et al., *supra*, at 1354 ("Among the lesbian mothers, the quality of the parent-child interaction did not differ significantly between the biological and the [non-biological] mother."); see also Susan Golombok et al., *The European Study of Assisted Reproduction Families: Family Functioning & Child Development* (1996), 11 *Human Reprod.* 2324, 2330 (finding the lack of a genetic link between a parent and child does not negatively impact parent-child relationships).

Where, as is the case here, both same-sex parents have participated in the children's upbringing, the children will form significant attachment relationships with each parent. A study evaluating child development in lesbian families found that "[b]oth women in the lesbian mother family were actively engaged in child care and a strong mutual attachment had been developed between [non-biological] mother and child." Brewaeys et al., *supra*, at 1356; see also Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in *Gay & Lesbian Parents* (Frederick W. Bozett Ed. 1987) 23–38. The record in this case likewise reflects that Rita Goodman was actively engaged in caring for S.J.L. and J.K.L. before her separation from Ms. LaPiana and that her caring for the boys continued after the separation. In fact, Ms. Goodman's more flexible work schedule has permitted her to care for the boys for extended periods when Ms. LaPiana has been unavailable. (See Affidavit of Rita Goodman 4, May 11, 2007, attached to Pet.'s Br. in Opp'n to Resp't's Mot. for Att'y Fees & Litg. Costs, May 14, 2007.) It is simply undisputed that strong bonds of attachment exist between Ms. Goodman and the children.

D. Children Experience Severe Emotional and Psychological Harm When Their Attachment Relationships with Their Parents Are Severed.

Continuity of the parent-child attachment relationship is essential to a child's healthy development and overall well-being. Goldstein et al., *supra*, at 31–33; see also Marty et al., *supra*, at 274 (“[T]he quality of the attachment has profound effects on the child's social adjustment.”); Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, *supra*, at 1145 (“Paramount in the lives of . . . children is their need for continuity with their primary attachment figures.”); Natl. Research Council & Inst. of Med., *supra*, at 265. Because children typically assume that they can depend on the predictability of both parents, severance or curtailment of the parent-child bond can be “a particularly devastating experience.” William F. Hodges, *Interventions of Children of Divorce: Custody, Access, & Psychotherapy* (2 Ed.1991) 8–9; see also Rayford W. Thweatt, *Divorce: Crisis Intervention Guided by Attachment Theory* (1980), 34 *Am.J.Psychotherapy* 240, 241 (explaining that upon separation from a person to whom a child has become attached, the child experiences “a predictable sequence of behavior with four phases: denial, protest, despair, and detachment”).

Numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships] and loss of a child's central parental love objects.” Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee* (2004), 10 *Psychol.Pub.Policy & L.* 5, 11; see also Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, *supra*, at 1146 (“Interruptions in the continuity of a child's caregiver are often detrimental.”); Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody & Access Decisions for Young Children* (2000), 38 *Fam. &*

Conciliation Cts.Rev. 297, 303. For example, interference with children's attachment relationships can lead to "aggression, fearful relationships, academic problems in school, and . . . elevated psychopathology." Marty et al., *supra*, at 274; see also Byrne et al., *supra*, at 118 ("[T]hreats or disruptions in the attachment relationships . . . lead to fear/anxiety."); Natl. Research Council & Inst. of Med., *supra*, at 265 ("[A]ttachments buffer young children against the development of serious behavior problems, in part by strengthening the human connections.").

Studies of children of divorced parents confirm the psychological harm that can result when a child is separated from a parent to whom he or she is attached. See, e.g., Judith S. Wallerstein & Sandra Blakeslee, *Second Chances: Men, Women & Children a Decade After Divorce* (1989) 145–60 (finding that children who do not maintain contact with parents suffer a continuing sense of loss and sadness); Judith S. Wallerstein & Joan B. Kelly, *Surviving the Breakup: How Children & Parents Cope with Divorce* (1980) 307 (finding that self-image of children from divorced families is "firmly tied to their relationship with *both* parents" (emphasis added)).

The "extreme distress" experienced by a child upon termination of an attachment figure's regular and customary role as a parent can occur even where there is no biological connection between parent and child. See Fiona L. Tasker & Susan Golombok, *Growing up in a Lesbian Family: Effects on Child Development* (1997) 12; see also Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care* (2004), 25 *Infant Mental Health J.* 379, 394 (explaining that children suffer greatly when separated from non-biological parent figures).

Specific research on children in gay and lesbian households demonstrates the same need for continuity, and resulting harm from disruption of attachment relationships, as that manifested in children of heterosexual parents. See, e.g., Tasker & Golombok, *supra*, at 12 (finding that cessation of the parent-child bond between a child and a lesbian psychological parent “can cause [the child] extreme distress”). In fact, researchers have found that when lesbian couples separate, the children mourn for the absent psychological parent just as they would for an absent biological or married parent after separation. See Martha Kirkpatrick et al., *Lesbian Mothers & Their Children: A Comparative Study* (1981), 51 *Am.J.Orthopsychiatry* 545, 550. Allowing the separation of a child from a psychological parent to become prolonged may be seriously detrimental to the child’s best interests.

E. A Child’s Health and Welfare Are Best Served by Nurturing and Maintaining Attachment Bonds with Both Parents.

In light of the importance of the parent-child bond to the overall health and welfare of children, researchers believe that children generally benefit from continued contact with both parents. See Michael E. Lamb, *Placing Children’s Interests First: Developmentally Appropriate Parenting Plans* (2002), 10 *Va.J.Soc.Policy & L.* 98, 103, 113–14 (explaining that everyday activities with both parents promote and maintain trust and confidence in the parents, while strengthening child-parent attachments); Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?* (1992), 54 *J.Marriage & Fam.* 837, 838 (“Children who maintain contact with both parents tend to be better adjusted.”).

The findings are no different for children of same-sex parenting relationships. As one prominent researcher explained, when same-sex parents who have jointly raised a

child since birth separate, “it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child’s relationship with both parents.” Charlotte J. Patterson, *Children of Lesbian & Gay Parents* (1992), 63 *Child Dev.* 1025, 1037; see also Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents* (2002), 109 *Pediatrics* 339 (advising that children of gays and lesbians need and deserve the same permanence and security in parental relationships as children of heterosexual parents); Am. Psychoanalytic Assn., *Position Statement on Gay & Lesbian Parenting* (May 16, 2002), <http://www.apsa.org/aboutapsaa/positionstatements/gayand%20lesbianparenting/tabid/471/Default.aspx> (concluding that gay and lesbian parents are capable of meeting the best interest of the child and should be afforded the same rights as heterosexual parents); Natl. Assn. of Soc. Workers, *Policy Statement: Lesbian, Gay, & Bisexual Issues*, in *Social Work Speaks* (2006) 245, 247 (stating that gays and lesbians should “be granted all rights, privileges, and responsibilities that are granted to heterosexual people, including but not limited to . . . child custody”).

Also important, denying a parent visitation rights can harm the children financially. Not surprisingly, empirical experience confirms that children benefit from access to greater financial resources and security. “One of the most consistent associations in developmental science is between economic hardship and compromised child development.” Natl. Research Council & Inst. of Med., *supra*, at 275. Depriving children of the financial support that the second parent can provide significantly limits the resources available to support the children and can cause greater financial insecurity in the children’s lives. See, e.g., Wallerstein & Blakeslee, *supra*, at 129–44 (describing the “genteel poverty” in which a single mother and her children lived, having received

only sporadic financial support from the children's father following the parents' divorce). Thus, for both psychological and practical financial reasons, the research strongly supports restoring the parent-child relationships that were disrupted here and securing them legally.

II. A NUMBER OF COURTS, INCLUDING THE SUPREME COURT OF OHIO, HAVE ACCEPTED THE SOCIAL SCIENCE RESEARCH IN RECOGNIZING THAT IT IS IN THE CHILD'S BEST INTEREST TO RESPECT A CHILD'S ESTABLISHED ATTACHMENT TO A SECOND PARENT.

As discussed above, social science research overwhelmingly shows that it is in the best interests of children to protect and maintain their established attachment relationships. It is critical to children's development, psychological health, and general well-being to foster and promote, rather than destroy, parental attachments, whether or not the parent is biologically related and whether or not the parents are same-sex or heterosexual. No different conclusion is warranted here. No concern has been raised regarding Ms. Goodman's care, support, and nurturing of S.J.L. and J.K.L. throughout their lives. From the times of their respective births, she has acted as their mother in every way. (See Report of Guardian ad Litem 4, June 5, 2008.) Likewise, it is beyond reasonable dispute that S.J.L. and J.K.L. have strong parent-child attachments to Ms. Goodman, whom they have known their entire lives as their "Mom" or "Mommy." (Id.) Even Ms. LaPiana acknowledges that separating Ms. Goodman from S.J.L. and J.K.L. would be detrimental to the boys. In her brief, Ms. LaPiana notes how important it is for the parent-child relationships to continue because an "an abrupt termination of the relationship could be a shock to [S.J.L.] and [J.K.L]." (Appellant's Br. 14.)

Consistent with the social sciences, Ohio courts have recognized that maintaining relationships with psychological parents can further the best interests of children, most

notably in *In re Bonfield*, 97 Ohio St.3d 387, 2002-Ohio-6660, 780 N.E.2d 241. In that case, as here, after careful planning, a same-sex couple started a family and raised two children together, with the children viewing the women equally as parents. *Id.* at ¶¶4–5. Reviewing the couple’s petition to adjudicate their rights as parents, the Court held that “the juvenile court has jurisdiction to determine the custody of the . . . children” and that the trial court must consider “all known factors in determining what is in the best interest of the children.” *Id.* at ¶¶45, 49. *In re Bonfield* thus instructs that it is appropriate for the juvenile courts to award visitation to psychological parents with whom the children have developed attachment bonds when doing so furthers the best interests of the children.²

Other courts have also respected the relationship between children and a same-sex parent, even where the state had laws excluding gay couples from marriage and/or domestic partnerships. For instance, in *Goodson v. Castellanos* (Tex.App.2007), 214 S.W.3d 741, 748–49, the court held, despite Texas laws opposed to same-sex marriage that “[t]he destruction of a parent-child relationship is a traumatic experience that can lead to emotional devastation for all the parties involved, and all reasonable efforts to prevent this outcome must be invoked when there is no indication that the destruction of the existing parent-child relationship is in the best interest of the child.” The court in

² Ohio courts’ reliance upon social science research when determining custody and visitation is by no means a new development. For example, in *Conkle v. Conkle* (4th Dist. 1987), 31 Ohio App.3d 169, 172, 509 N.E.2d 983, the court quoted an article in the *Bulletin of the American Academy of Psychiatry and the Law* by Dr. Richard Green, an expert on gender identity in children, to reject a mother’s concerns that her two boys’ contact with their bisexual father would trigger homosexual tendencies. See also *In re A.V.*, 10th Dist. No. 05AP-789, 2006-Ohio-3149, at ¶19 n.3; *Thompson v. Thompson* (4th Dist. 1987), 31 Ohio App.3d 254, 256, 511 N.E.2d 412; *Kraus v. Kraus* (8th Dist. 1983), 10 Ohio App.3d 63, 70, 460 N.E.2d 680; *Whaley v. Whaley* (4th Dist. 1978), 61 Ohio App.2d 111, 112–13, 399 N.E.2d 1270.

In re Adoption of K.S.P. (Ind.App.2004), 804 N.E.2d 1253, 1260, articulated that same reasoning, stating: “Allowing a second parent to share legal responsibility for the financial, spiritual, educational, and emotional well-being of the child in a stable, supportive, and nurturing environment can only be in the best interest of that child.” Finally, in *Schott v. Schott* (Iowa 2008), 744 N.W.2d 85, 89, the court held that the district court that granted a second parent adoption had jurisdiction to do so and that such adoptions are not void.

In sum, decades of social science research confirm that it is in the best interest of children to protect and maintain their established attachment relationships. The trial court recognized the importance of the children’s relationships with Ms. Goodman when it concluded that it was in the best interests of S.J.L. and J.K.L. for both Ms. Goodman and Ms. LaPiana to continue parenting the children. A result to the contrary would be inconsistent with the strong public policy that parents’ asserted rights are secondary to the best interests of children and the Supreme Court of Ohio’s holding in *In re Bonfield*. As the social science also demonstrates, the consequences of severing S.J.L.’s and J.K.L.’s established parental relationships would be harmful, if not devastating.

CONCLUSION

As explained above, social science and child development research confirms that children’s best interests may compel custody, visitation, and support decrees that preserve children’s relationships with psychological parents—no differently than with biological or adoptive parents, irrespective of the parents’ sexual orientation. The trial court’s order respects the best interests of S.J.L. and J.K.L. by allowing their existing attachment bonds to continue to foster and by permitting Ms. Goodman to contribute to the financial support of her sons. Separating S.J.L. and J.K.L. from *either* of their

parents would cause irreparable damage, and the children would face significant and severe harm as a result.

The trial court's Journal Entry of August 5, 2008 appropriately considered the children's relationships with their non-biological parent in determining what was in the best interests of S.J.L. and J.K.L. In reviewing the trial court's order, this Court should likewise consider the strong attachment bonds that S.J.L. and J.K.L. have developed with Ms. Goodman.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing Brief of *Amici Curiae* The National Association of Social Workers and The National Association of Social Workers, Ohio Chapter, in Support of Appellee Rita Goodman was served by regular First Class United States Mail, postage prepaid, this 20th day of January, 2009, on the following:

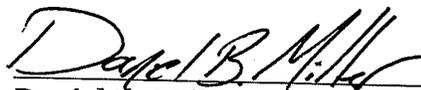
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