

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re:

L.K.M., a minor child.

Case No. 2010-0276

ON APPEAL FROM THE
FIRST DISTRICT
COURT OF APPEALS
Court of Appeals
Case Nos. C090285 and C090407

**BRIEF OF AMICI CURIAE THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS AND THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS, OHIO CHAPTER, NOT FILED IN EXPRESS
SUPPORT OF ANY OF THE PARTIES TO THE APPEAL**

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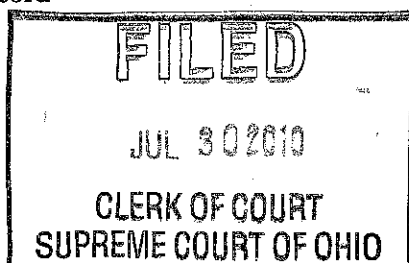


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INTEREST OF AMICI CURIAE

Founded in 1955 as a non-profit professional association, the National Association of Social Workers (“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 the National Association of Social Workers, Ohio Chapter (“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. 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 this brief to advocate the best interests of children in the State of Ohio, rather than the position of any party to this appeal.

INTRODUCTION

In Ohio and elsewhere, countless children are raised by parents who are not the children's biological mother or father. Instead of being raised solely by their biological parents, children are increasingly supported and cared for by two mothers, by two fathers, or by a biological parent and another relative. Such is the case with L.K.M., who has been raised by Appellant Michele Hobbs and Appellee Kelly Mullen as co-parents. 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.

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 Ohio courts act in the best interests of children when they grant custody and visitation rights based on the bonds existing between the child and the parents.

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, this Court has permitted Ohio's juvenile courts to grant custody and visitation in favor of gay and lesbian psychological parents 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 social sciences, Ohio case-law precedents, and the legal positions adopted in many other jurisdictions, discussed *infra*, all counsel that decisions related to custody and visitation should be informed by the attachment bonds children have made with their non-biological parents.

ARGUMENT

PROPOSITION OF LAW NO. I: IN ALLOCATING CUSTODY AND VISITATION RIGHTS, OHIO COURTS SHOULD PROTECT AND PRESERVE ATTACHMENT BONDS BETWEEN CHILDREN AND THEIR GAY AND LESBIAN PSYCHOLOGICAL PARENTS IF DOING SO IS 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., Konner, *Childhood* (1991) 84–87. See generally, e.g., Bowlby, *Attachment* (2 Ed. 1982). An “attachment relationship” is defined as 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.” 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 Seigel, *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* (Shonkoff & 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, 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 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.”). An adult with whom a child has developed an attachment relationship and who functions in a continuing parental role 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 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 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., Green & Bozett, Lesbian Mothers & Gay Fathers, in *Homosexuality: Research Applications for Public Policy* (Gonsiorek & 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"); 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, 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 both same-sex parents participate 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, McCandlish, Against All Odds: Lesbian Mother Family Dynamics, in *Gay & Lesbian Parents* (Bozett Ed. 1987) 23-38. In short, the creation of

attachment bonds is not dependent upon whether children have same-sex or opposite-sex parents.

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.” Hodges, Interventions of Children of Divorce: Custody, Access, & Psychotherapy (2 Ed. 1991) 8–9; see, also, 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.” 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.”); Kelly & 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., Wallerstein & 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); Wallerstein & 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 Tasker & Golombok, *Growing up in a Lesbian Family: Effects on Child Development* (1997) 12; see, also, 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 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 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 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); Donnelly & 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.” 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/About_APsaA/Position_Statements/Gay_and_Lesbian_Parenting.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* (2009) 218, 220 (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, the research strongly supports considering both the psychological and financial support that a non-biological parent provides when deciding whether custody by the non-biological parent is in the child's best interests.

PROPOSITION OF LAW NO. II: OHIO LAW ACCEPTS THE SOCIAL SCIENCE RESEARCH AND RECOGNIZES THAT IT IS IN CHILDREN'S BEST INTERESTS TO RESPECT CHILDREN'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.

Consistent with the social sciences, this Court has 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, 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 custody and visitation to psychological parents with whom the children have developed attachment bonds when doing so furthers the best interests of the children.¹ See, also, *In re J.B.S.*, 4th Dist. No. 09CA3316, 2010-Ohio-1974 (determining that, because of the “strong bond” between the child and the grandparents and that tearing the child away from this relationship would be “traumatic,” the child’s grandparents should be granted custody of the child).

Other jurisdictions have likewise 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, notwithstanding 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 *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.” In *Schott v. Schott* (Iowa 2008), 744 N.W.2d 85, 89, the court held that

¹ Ohio courts’ reliance upon social science research when determining custody and visitation is by no means a new development. For example, in *Conkel v. Conkel* (4th Dist. 1987), 31 Ohio App.3d 169, 172, 509 N.E.2d 983, the court of appeals 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.

the district court that granted a second parent adoption had jurisdiction to do so and that such adoptions are not void.

Finally, just last year, the Supreme Court of Montana held that a same-sex psychological parent, who raised two children whom her partner of ten years had adopted, was a parent to the children under a Montana law that recognizes parent-child relationships that arise outside of biology and adoption. *Kulstad v. Maniaci* (2009), 352 Mont. 513, 220 P.3d 595. The court recognized the psychological parent's support of the children's physical, psychological, and developmental needs, along with the financial support that she provided the family, and rejected the other parent's argument that a parent-child relationship did not exist. *Id.* at ¶78 ("Maniaci cannot rewrite the history of the fact that she and Kulstad lived together for more than 10 years and jointly raised the minor children in the same household."). Accordingly, the court affirmed the psychological parent's role as the children's mother. See, also, *In re L.F.A.* (2009), 353 Mont. 220, 225, 220 P.3d 391 (observing that an established child-parent relationship existed between children and their non-biological mother and that it was in the best interests of the children to allocate parenting time to both of the parents).

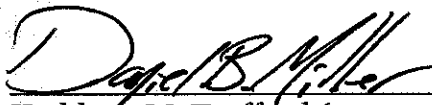
In sum, decades of social science research confirm that it is in the best interests of children to protect and maintain their established attachment relationships. Following the social science studies, Ohio courts have recognized the importance of children's relationships with their non-biological parents and have considered the importance of protecting and preserving these attachment bonds when determining awards of custody and visitation. Ignoring children's attachment bonds and instead focusing on whether co-parents' decision to raise the children equally was reduced to a writing or submitted to a court for approval is inconsistent with the strong public policy

that parents' asserted rights are secondary to the best interests of children. It is also contrary to this Court's holding in *In re Bonfield*. Ohio law recognizes that the juvenile courts must respect children's attachment bonds to non-biological parents and should pause before severing these relationships because doing so could be harmful, if not devastating, to the children's welfare.

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. This Court's review of the juvenile court's order should be informed by the social science research and Ohio case-law precedents acknowledging the importance of considering children's strong attachment bonds to non-biological parents.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2010, a copy of the foregoing *Brief Of Amici Curiae The National Association Of Social Workers And The National Association Of Social Workers, Ohio Chapter, Not Filed In Express Support Of Any Of The Parties To The Appeal*, was served via regular U.S. mail and email upon the following counsel of record:

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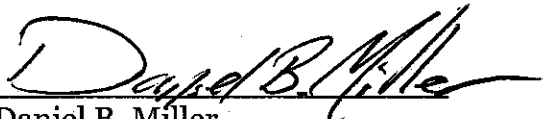
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