

IN THE SUPREME COURT OF OHIO

IN RE: L.E.S., E.S. & N.S.

CASE No. 2024-0303

ON APPEAL FROM THE COURT OF APPEALS,
FIRST APPELLATE DISTRICT,
HAMILTON COUNTY
Nos. C-220430, C-220436

**BRIEF OF AMICI CURIAE
NATIONAL ASSOCIATION OF SOCIAL WORKERS
INCLUDING ITS OHIO CHAPTER
AND AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION IN SUPPORT
OF APPELLEE CARMEN EDMONDS**

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INTERESTS OF AMICI CURIAE

Amicus the National Association of Social Workers (“NASW”), established in 1955, is the largest association of professional social workers in the world, with approximately 110,000 members, and chapters throughout the United States. The Ohio Chapter of NASW has more than 4,000 members. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social worker profession, NASW provides continuing education, enforces the NASW Code of Ethics, conducts research, publishes books and studies, promulgates professional standards and criteria, and develops policy statements on issues of importance to the social work profession. Consistent with its published policy statements, NASW, including its Ohio Chapter, supports protecting the familial attachments between LGBTQ+ couples and their children and recognizes that these familial relationships are of the same strength, depth, and importance to the healthy development of children as the relationships of opposite-sex couples and their children.

NASW’s professional members have significant knowledge and experience with the issues presented in this case. Social workers regularly engage with clients in their homes and provide counseling on topics such as parent-child relationships, adoption, custodial arrangements, and other changes in family structure. Courts commonly call upon social workers to testify as expert witnesses in proceedings that affect the welfare of children, including custody and visitation hearings, foster cases, parental fitness, and adoptions. NASW has routinely appeared in state and federal courts as amicus to advocate for the rights of children and LGBTQ+ families, including in *Chatterjee v. King*, 2012-NMSC-019; *LP v. LF*, 2014 WY 152; *Conover v. Conover*, 450 Md. 51; *Strickland v. Day*, 239 So. 3d 486 (Miss. 2018); and *In re Bonfield*, 2002-Ohio-6660.

Amicus the American Civil Liberties Union of Ohio Foundation (“ACLU”) is the Ohio affiliate of the American Civil Liberties Union, one of the oldest and largest organizations in the nation dedicated to protecting the civil rights and liberties guaranteed in the United States Constitution and laws of the United States. With over 1.7 million members across the country and with nearly 27,000 members and donors in Ohio, the ACLU appears routinely in state and federal courts as amicus and as direct counsel to defend civil rights and liberties as established in the federal and state constitutions and laws and advocate for the constitutional rights of all people, including the rights of same-sex parents and their children. This includes appearing as amici in *In re Jones*, 2002-Ohio-2279, *In re Bicknell*, 96 Ohio St. 3d 76 (2002), and *In re Adoption of Charles B.*, 50 Ohio St. 3d 88 (1990), and as direct counsel in *Obergefell v. Hodges*, 576 U.S. 644 (2015). Thus, the resolution of this case is a matter of substantial concern to the ACLU and its members.

INTRODUCTION

This case presents the Court with the opportunity to interpret Ohio’s parentage laws to appropriately prioritize the best interests of children. A child’s best interest has long served as the cornerstone of family law and continues to be judges’ primary focus when resolving custody and visitation disputes. As repeatedly confirmed by social science and the lived experiences of children, children’s interests are best served by preserving their attachment bonds with the individual(s) who have embraced a parental role in those children’s lives, thus avoiding the detrimental physical and emotional effects of disrupting those stabilizing and nurturing relationships. It is also well established that parent-child relationships are often grounded in the parental roles assumed and emotional relationships built after a couple jointly decides to have a child. Even before the United States Supreme Court extended the rights and responsibilities of

marriage to same-sex couples in *Obergefell v. Hodges*, 576 U.S. 644 (2015), numerous states prioritized the best interest of the child by deciding that the nonbiological parent in a same-sex couple should be treated the same as the biological parent when assigning parental rights and responsibilities.¹ Post-*Obergefell*, more states followed suit by providing pathways for non-biological, non-adoptive individuals to be recognized as legal parents when they have raised a child with a same-sex biological parent.² This Court now has the opportunity to advance the best interest of the children of same-sex parents in Ohio whose relationship predated *Obergefell*, thus protecting their mental and emotional wellbeing.

In support of these broader interests, this brief addresses the importance of the legal recognition of the parent-child relationship in the context of the best interests of the children. It summarizes some of the substantial empirical research proving the importance of parental attachment bonds to a child’s healthy development, regardless of the biological or marital status of the attachment figure. This evidence confirms that children develop significant emotional and psychological attachment bonds due to parental-figure-and-child interactions, and that in forming such bonds, children do not consider the biological connection or legal status of the person serving in the parental role. This evidence further confirms that disruption of these bonds often has devastating short and long-term impacts on the child’s physical, mental, and emotional

¹ See, e.g., *Chatterjee v. King*, 2012-NMSC-019, ¶ 37, (“[I]t is against public policy to deny parental rights and responsibilities based solely on the sex of either or both of the parents. The better view is to recognize that the child’s best interests are served when intending parents physically, emotionally, and financially support the child from the time the child comes into their lives.”).

² See, e.g., *McLaughlin v. Jones*, 243 Ariz. 29, 37, (finding the “constellation of benefits” linked to marriage as guaranteed in *Obergefell* required the marital paternity presumption to extend equally to same-sex couples to promote a child’s best interest in having “meaningful parenting time and participation from both parents”).

health. The best way to avoid infliction of such trauma is to avoid the disruption or destruction of the child's attachment bonds.

This brief will further address how courts in Ohio have long prioritized the best interest of children in child welfare decisions. Ohio's own parentage statutes recognize the preference for two parents, and courts routinely acknowledge that a child's best interest is served through the involvement and support of two loving parents.

For the reasons summarized above and explained more fully below, amici *curiae* respectfully request that this Court affirm the lower court's decision and remand to the trial court for a determination of whether the parties would have been married at the time their children were conceived, absent Ohio's unconstitutional ban on same-sex marriage. This holding falls well within the intent of Ohio's parenting statutes, "legitimizing any child(ren) conceived under the circumstances of [Ohio's non-spousal artificial insemination statute] by two consenting parents . . . ensuring that both consenting parents are responsible for the child(ren)'s welfare." (See Appeal Op. at 12; R.C. 3111.95(A))

STATEMENT OF FACTS AND THE CASE

Ms. Edmonds would today be a legally recognized parent of the three children she and Ms. Shahani decided to bring into the world during their 11-year romantic relationship, and whom Ms. Edmonds continued to parent after the termination of that relationship, if Ohio law had provided a path for her to attain that status. It did not. Under Ohio law, a person is only legally recognized as the parent of a child through biology or adoption. R.C. 3111.01(A). Ms. Edmonds is not a biological parent of the three children, whom she has continuously parented since birth, and she has been ineligible to adopt the children because second-parent adoption in Ohio requires marriage. See R.C. 3107.03 (enumerating the persons in Ohio who may adopt).

Ms. Edmonds could not marry Ms. Shahani during their romantic relationship because it predated the U.S. Supreme Court's 2015 *Obergefell* decision mandating that Ohio allow and recognize marriages of same-sex couples.

Although the couple could not legally marry in Ohio, Ms. Edmonds proposed to Ms. Shahani, who accepted. Both women bought silver and gold bracelets to represent their engagement. They even traveled to another state to marry but ultimately chose not to because they knew their marriage would not be recognized in Ohio.

As their relationship evolved, Ms. Edmonds and Ms. Shahani decided, in 2011, to have children. Together, they began the artificial insemination process and together decided that Ms. Shahani would carry the children due to Ms. Edmonds' health concerns. They selected sperm from an anonymous donor of Columbian descent to match Ms. Edmonds' nationality. During this process, Ms. Edmonds attended pre-natal doctor's visits with Ms. Shahani, the couple together had a baby shower, and together drafted a birth plan. The couple repeated the process of artificial insemination when their first child was 15 months old. At birth, the children were all given the last name of "Edmonds-Shahani." The couple held themselves out to the community as parents of the children, who call both parties "Mama." Their Living Will referenced the couple's "agreement to have and raise" the children as "equal custodians" and Ms. Shahani appointed Ms. Edmonds as the guardian of the children. Both parties contributed financially to the care of the children.

After the couples' relationship ended in 2014, Ms. Shahani continued to refer to Ms. Edmonds as a parent in correspondence with the children's school. In 2016, the parties entered into an agreement to dissolve their "marriage like relationship" and agreed to a parenting time schedule. In 2017, however, Ms. Shahani changed two of the children's last names, removing

“Edmonds.” Because Ms. Edmonds is not legally considered a parent, she was not notified of the name change. Ms. Shahani then unilaterally moved the children to a different school and instructed school officials not to communicate with Ms. Edmonds regarding the children.

In 2018, Ms. Shahani filed a Motion for Contempt of Visitation, and a Motion to Terminate or in the Alternative Motion to Modify Shared Custody Agreement. Ms. Edmonds then filed a Complaint for Parentage, Custody, and in the Alternative, Shared Custody, Visitation or Companionship Rights in response. The initial court order in 2019 concluded that Ms. Edmonds was entitled to the same parental rights as Ms. Shahani because the parties planned to have the children together. Three years later, however, the trial court concluded that Ms. Edmonds was not entitled to the same parental rights as Ms. Shahani, citing the Ohio Supreme Court’s decision in *In re Mullen*, 2011-Ohio-3361, and *In re Bonfield*, 2002-Ohio-6660. Because the trial court found that the couple had entered into a shared custody agreement for all three children, however, it found Ms. Edmonds entitled to companionship time. In determining the amount of companionship time, the court analyzed the best interests of the children, taking a variety of factors into consideration. Although this order provides Ms. Edmonds time with the children, she lacks the protections under the law accorded a legal parent.

Ohio’s parentage laws, in conjunction with the U.S. Supreme Court’s holding in *Obergefell v. Hodges*, do, however, provide a pathway for Ms. Edmonds and other non-biological, non-adoptive, same-sex parents who were unable to have their marriages legally recognized in the State of Ohio during the course of their relationship to establish legal parentage and confer the accompanying rights and responsibilities of parenthood. The First District rightly acknowledged this concept in remanding to the trial court for a determination of whether the parties *would have been* married had they legally been able to do so.

Moreover, as amici discuss below, there is another major issue at the heart of this case: when a person has undertaken a critical parental role in a child’s life for a significant period, fracturing the bond between the parent and child can have dire consequences on the child’s wellbeing. This is confirmed by the overwhelming body of social science research, and the fundamental guiding principle in Ohio’s parentage laws, which prioritize the best interests of the children. To find otherwise leaves the children of same-sex couples in Ohio who were unable to marry prior to *Obergefell* in danger of unequal treatment of the law and exposes them to detrimental social and emotional consequences.

ARGUMENT

I. Fracturing the Bond between Children and their Parents Can Have Dire Consequences on the Social and Emotional Development of Children, Regardless of the Parent’s Biological or Marital Connection to the Child

In Ohio and elsewhere, the “best interest of the child” analysis remains at the forefront of any custody and visitation decisions to determine the allocation of parental responsibilities. R.C. 3109.04(B)(1). As more fully explained below, it is in the best interest of the child to maintain healthy attachment bonds with their parents, regardless of the parent’s biological connection or legal status.

a. Empirical research confirms that the formation of attachment bonds is critical to a child’s healthy development.

Children develop strong attachment relationships with their biological parents and other parental figures early in life, and these relationships strengthen over time. *See, e.g.*, Melvin Konner, *Childhood* 84–87 (1991); John Bowlby, *Attachment* (2d ed. 1982). An “attachment relationship” is a “reciprocal, enduring, emotional, and physical affiliation” through which a child forms his or her “concepts of self, others, and the world.” Beverly J. James, *Handbook for Treatment of Attachment-Trauma Problems in Children* 1–2 (1994). “Attachment figures are

one's most trusted companions.” Mary D. Ainsworth et al., *Patterns of Attachment: A Psychological Study of the Strange Situation* 20 (1978).

Further, the presence of additional attachment figures in a child's life provides additional benefits. Tomotaka Umemura et al., *Adolescents' Multiple Versus Single Primary Attachment Figures, Reorganization of Attachment Hierarchy, and Adjustments: The Important People Interview Approach*, 20(5) *Attachment & Hum. Development* 532, 532 (2018) (finding that adolescents who bonded with multiple attachment figures were less likely to internalize problems than those who only bonded with one).

Attachment relationships foster the development of “self-awareness, social competence, conscience, emotional growth and emotional regulation, [and] learning and cognitive growth.” Nat'l Research Council & Inst. of Med., *From Neurons to Neighborhoods: The Science of Early Childhood Development* 265 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000); *see also* James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 *J. Child Psychol. & Psychiatry* 115, 118 (2005). Examples of the importance of stable attachment bonds abound. One study found a statistically significant correlation between secure attachment and successful peer relations. Barry Schneider et al., *Child-Parent Attachment and Children's Peer Relations: A Quantitative Review*, 37 *Developmental Psychol.* 86, 90 (2001). Another examined stepparent-child relationships and found that a close and positive relationship between stepparent and child correlates with the child's tendency to address problems in a healthy manner over time. Todd M. Jensen et al., *Stepfamily Relationship Quality and Children's Internalizing and Externalizing Problems*, 57(2) *Family Process* 477 (2017). Additional empirical research confirming the link between strong

attachment bonds and healthy children is presented in the various works cited throughout this brief.

b. Attachment relationships develop despite the absence of a biological connection between parent and child.

The extensive literature on parent-child attachment has found that it is the nature and quality of the parent-child interaction itself, as opposed to a biological link, that fosters attachment relationships. *See, e.g.,* Raymond W. Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443, 454 (1998) (“[O]ur results are consistent with the general hypothesis that children’s well-being is more a function of parenting and relationship processes within the family [than] household composition or demographic factors.”).

Importantly, attachment bonds between children and non-biological parents are no less important than any other attachment bonds. *See generally,* Joseph Goldstein et al., *Beyond the Best Interests of the Child* 27 (2d ed. 1979). Children can develop these bonds with those who “on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfill[] the child’s psychological needs for a parent, as well as the child’s physical needs.” *Id.* at 98 (emphasis added); *see also* Jude Cassidy, *The Nature of the Child’s Ties* in *Handbook of Attachment: Theory, Research & Clinical Applications* 3, 12 (1999). For example, a study of families who used assisted reproduction methods found no evidence to indicate that “the missing genetic link” between parent and child affected the father-child relationship in young children. Anne Brewaeys, *Review: Parent-Child Relationships and Child Development in Donor Insemination Families*, 7 *Hum. Reprod. Update* 38, 44 (2001). In another study, researchers found that children adopted by lesbian couples “developed bonds of attachment to both adoptive mothers and showed preference for the parents over other caregivers.” Susanne Bennett, *Is There*

a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families, 20 *Child & Adolescent Soc. Work J.* 159, 166 (2003).

Numerous studies have shown that it is the presence of positive relationships and processes within a family, and not the family-type, that impacts a child's peer relations and general development. *See, e.g.*, Todd M. Jensen, *Constellations of Dyadic Relationship Quality in Stepfamilies: A Factor Mixture Model*, 31(8) *J. Family Psychol.* 1051, 1051–62 (2017) (noting how stepparent-child relationships “can promote youth adjustment across a number of physical, behavioral, and psychological well-being indicators”); Elizabeth Short et al., *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families: A Literature Review Prepared for The Australian Psychological Society* 25 (2007), <https://psychology.org.au/getmedia/47196902-158d-4cbb-86e6-2f3f1c71ffd1/lgbt-families-literature-review.pdf> (“The research indicates that parenting practices and children's outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents, despite the reality that considerable legal discrimination and inequity remain significant challenges for these families.”); *see also* A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Hum. Reprod.* 1349, 1358 (1997) (finding that 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”).

As the trial court found, Ms. Edmonds has long served and continues to serve a primary supporting and nurturing role in the lives of all three children. Extensive empirical evidence confirms that the lack of a biological connection to the children has made no difference in her ability to form attachment bonds and connect with the children in the same way as Ms. Shahani. *See, e.g., id.* at 1356 (confirming “a strong mutual attachment” can develop between a non-

biological mother and child); Joseph S. Jackson & Lauren G. Fasig, *The Parentless Child's Right to a Permanent Family*, 46 Wake Forest L. Rev. 1, 53 nn. 250–51 (2011) (surveying literature demonstrating the formation of secure attachment bonds between foster children and their foster parents); Lawrence M. Berger et al., *Parenting Practices of Resident Fathers: The Role of Marital and Biological Ties*, 70(3) J. Marriage & Family 625, 631 (2008) (“We expected that biological fathers would demonstrate higher quality parenting practices than social fathers. For the most part, however, we do not find this to be the case.”).

Importantly, the potentially devastating harm inflicted on a child when separated from a parental figure does not depend on a biological link between the two. Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care*, 25 Infant Mental Health J. 379, 394 (2004) (explaining that children suffer greatly when separated from non-biological parental figures); Fiona L. Tasker & Susan Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* 12 (1997) (finding that cessation of the parent-child bond between a child and a lesbian psychological parent “can cause [the child] extreme distress”). Thus, courts should take special care when their decisions are likely to threaten or sever bonds between children and their parents.

c. A child’s health and welfare are best served by nurturing and maintaining attachment bonds with their parents.

The evidence in this case leaves no doubt that Ms. Edmonds has been a parent to these children from prior to their births to the present. The obvious way to avoid injury arising from disruption of any healthy parent-child bond is to avoid disrupting it in the first place. Empirical research has shown that children benefit from stable, continued interaction with parents. *See* Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?*, 54 J. Marriage & Fam. 837,838 (1992) (“Children who maintain contact

with both parents tend to be better adjusted.”); Grazyna Kochanska & Sanghag Kim, *Early Attachment Organization with Both Parents and Future Behavior Problems: From Infancy to Middle Childhood*, 84(1) *Child Dev.* 283, 283–96 (2013). Participation in everyday activities promotes trust and strengthens the attachment relationship between parent and child. See Michael E. Lamb, *Placing Children’s Interests First: Developmentally Appropriate Parenting Plans*, 10 *Va. J. Soc. Pol’y & L.* 98, 103, 113–14 (2002).

The parent-child interaction is just as critical when the parent lacks biological ties to the child. Sharon H. Bzostek, *Social Fathers and Child Well-Being*, 70 *J. Marriage & Family* 950, 950, 958–59 (2008) (reporting that “involvement by resident social fathers is as beneficial for child well-being as involvement by resident biological fathers”); Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 *Child Dev.* 1025, 1037 (1992) (concluding that, 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”).

In light of these considerations, the American Psychoanalytic Association, the American Academy of Pediatrics, and NASW have all concluded that relationships with non-biological parents and attachment figures should be considered by courts when a child’s best interests are being evaluated. Psychoanalytic Ass’n, *Position Statement on Parenting*, (June 2012), <https://apsa.org/sites/default/files/2012%20%20Position%20Statement%20on%20Parenting.pdf> (concluding “that the salient consideration in all decisions about custody and parenting...child rearing, adoption, and visitation, is the best interest of the child”, a factor which is influenced most strongly by “family processes and the quality of interactions and relationships”); George J. Cohen et al., *Am. Acad. of Pediatrics, Policy Statement: Helping Children and Families Deal*

with Divorce and Separation, 138(6) *Pediatrics* 1, 4 (2016), <https://publications.aap.org/pediatrics/article/138/6/e20163020/52651/Helping-Children-and-Families-Deal-With-Divorce> (“A person who raises a child but who does not have a legal relationship to that child through biology, marriage, or adoption may not have the same protections for a continued relationship with the child despite the fact that the effect on the child can be as significant.”); accord Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues in Social Work Speaks* 219, 221–22 (9th ed. 2012).

In short, giving non-biological, same-sex partners legal parental status with respect to the children they have helped bring into the world and raise represents an important step toward fostering the stability and health of such children, and gives these children a better chance of growing up emotionally healthy and strong.

II. The Best Interest of the Child Standard has Always Been Paramount in Child Welfare Decisions in Ohio

The best interest of the child standard is, and has always been, the fundamental guiding principle in Ohio parentage decisions. See *Ayers v. Ayers*, 1993 Ohio App. LEXIS 319, *7 (2nd Dist.) (“In construing R.C. 3109.04 there is no question that the paramount and overriding concern of the statute is the best interests of the children and that it is the court’s functions to see that the children’s best interests are protected.”); *Davis v. Flickinger*, 77 Ohio St. 3d 415, 420 (1997) (quoting Justice Resnick’s dissent in *Pater v. Pater*, 63 Ohio St. 3d 393, 403 (1992), the court held that a custody decision “is based primarily on the best interests of the child, with *all* other concerns of secondary importance”). In fact, the “best interest of the child” phrase is used forty-seven times in the Ohio Parentage statute, R.C. 3109.04, leading one to conclude that it is of the utmost importance. See *Marker v. Grimm*, 65 Ohio St. 3d 139, 141 (1992) (concluding the

use of the phrase “best interest of the child” thirteen times in Ohio’s Child Support Statute, R.C. 3113.215, meant it was the statute’s “overriding concern”).

As the social science affirms and Ohio courts have long recognized, the best interest of a child encompasses the involvement and participation of both parents, “where possible and desired by the parent.” *See Davis*, 77 Ohio St. 3d at 419; *see also North v. North*, Union C.P. No. 11-DR-0249, 2013 Ohio Misc. LEXIS 9695, at *6 (Dec. 10, 2013) (“[I]t is also important that a child have the security of two loving parents and the opportunity to be parented by each.”). Ohio’s own parentage statutes acknowledge the preference for two parents. *See* R.C. 3111.01(B) (extending the parent-child relationship statute “equally to all children and all parents, regardless of the marital status of the parents”); R.C. 3111.03 (providing for the presumption of paternity, implicitly recognizing the value of having two parents to support a child).

Restricting parental rights to biology or marriage forecloses the perpetuation of these attachment bonds and puts the children of same-sex couples in Ohio whose relationship predated *Obergefell* at risk of unequal treatment by the law. This unequal treatment, in turn, inflicts significant injuries on the children by legally sanctioning their separation from individuals who they have known and loved as parents since birth. At least one Ohio court to consider a similar issue has affirmed the same. *See Sparks v. Meijer, Inc.*, Franklin C.P. No. 15-CVC-1413, 2015 Ohio Misc. LEXIS 23179, at *7 (Nov. 12, 2015) (permitting a loss of consortium claim requiring marriage to a same-sex couple who “would have been married in Ohio in 2010 had they been legally able”). This Court now has the opportunity to interpret Ohio parentage statutes consistent with precedent that prioritizes protecting the best interest of the children of same sex families and preserves the attachment bonds that these children have with their parents. Failure to do so

may lead to harmful social and emotional consequences for children of same-sex couples and would undermine the rights guaranteed in *Obergefell*.

CONCLUSION

For the foregoing reasons, amici curiae respectfully request this Court affirm the lower court's decision, providing a pathway for Ms. Edmonds to be recognized as the legal parent of her children and thus entitled to the same rights of a parent as Ms. Shahani.

Dated: September 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify the foregoing was filed via the Court's e-filing system on September 16, 2024. I further certify that a copy was served on all counsel below via electronic mail.

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