

ORIGINAL

IN THE SUPREME COURT OF OHIO

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<b>In re Adoption of : G.V.</b>	:	<b>Supreme Court No. 09-2355</b>
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	:	<b>On Appeal from the</b>
	:	<b>Lucas County Court of Appeals,</b>
<b>Jason and Christy Vaughn</b>	:	<b>Sixth Appellate District</b>
	:	
<b>Appellants</b>	:	<b>Court of Appeals</b>
	:	<b>Case No. L-09-1160</b>
	:	<b>(Entry Date: November 30, 2009)</b>
	:	
	:	
<b>Benjamin Wyrembek</b>	:	<b>Trial Court No. 2008 ADP 000010</b>
	:	<b>Lucas County Probate Court</b>
<b>Appellee</b>	:	
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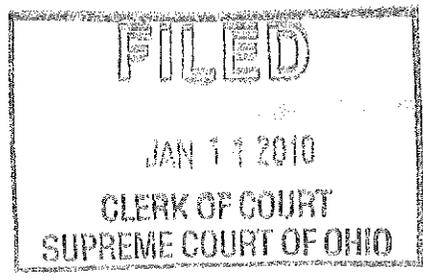
**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE  
AMERICAN ACADEMY OF ADOPTION ATTORNEYS**

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## **I. Statement of Amicus Curiae**

The American Academy of Adoption Attorneys is a not-for-profit national association of attorneys, judges, and law professors who practice, and have otherwise distinguished themselves, in the field of adoption law, with dedication to the highest standards of practice in adoption. The more than 300 members of the Academy are experts in the complexities of adoption law and all varieties of interstate and intercountry adoption regulations. Members must maintain their practice according to the highest standards of professionalism, competence, and ethics. The Academy's mission is: to support the rights of children to live in safe, permanent homes with loving families; to ensure appropriate consideration of the interests of all parties to adoptions; and to assist in the orderly and legal process of adoption. To this end, the Academy's work includes promoting the reform of adoption laws and disseminating information on ethical adoption practices. As an organization, and through its members and committees, the Academy lends pro bono assistance in worthy cases and actively participates in the drafting and passage of adoption legislation. The Academy publishes a newsletter, holds annual and mid-year conferences, and conducts educational seminars for its members and other interested professionals. Academy members are frequently invited to make presentations as adoption experts for organizations throughout the country. The American Academy of Adoption Attorneys is committed to improving the lives of children by advocating for the benefits and stability provided through adoption.

## **II. Statement of Case and Facts**

Amicus Curiae respectfully adopts and incorporates by reference the Statement of Case

and Facts presented by Appellants Jason and Christy Vaughn.

### **III. Argument**

This is a case of national importance. Many states have enacted a putative father registry or other legislative provisions to address the rights of the parties in adoption proceedings. If this Ohio Supreme Court does not accept this case and clarify the applicability of the registry in Ohio, there will be great uncertainty as to Ohio adoption laws. This will adversely affect other states in at least two ways. First, there are many interstate adoptions that involve Ohio as the sending state or the receiving state in which the laws of Ohio are part of the interstate adoption process. If the laws relating to putative fathers are unclear in Ohio, this will impact many of these interstate adoptions. Second, other states may look to Ohio in addressing similar issues in their own state. A decision from the highest court in Ohio, rather than conflicting decisions from Ohio appellate districts, will assist in clarifying the adoption process throughout the United States.

The use of putative fathers registries to facilitate early permanency for children is consistent with the stated national child welfare policy that views adoption as an option for providing such permanency. There has been much concern in recent years with providing children with stable, permanent homes. The Ohio legislature has moved by mandating prompt permanency for children in public agency custody and by allowing easier involuntary termination of the rights of abandoning birth-parents in private adoptions. Since 1997, the proper application of the Ohio Putative Father Registry has been instrumental in providing early permanency for a countless number of Ohio children.

The putative father registry represents a legislative balancing of the rights of the putative father against the rights of the child. For the court to disturb the balance struck by the legislature denies the child an opportunity to have his or her best interests considered and reduces the child to a mere chattel. The child's right to permanency must be balanced against the rights of a birth-father that has allegedly abandoned both birth-mother and the child. The Ohio Revised Code sets forth the right to allege the abandonment by the birth-father in R.C. 3107.07(B)(2). A court system that would not allow the statutory abandonment allegations to even be presented would delay permanency and would certainly be contrary to the child's best interest. Clearly this is not a direction in which the court system should be moving.

This Supreme Court has stated that the ultimate goal in the adoption process is to protect the best interests of children and ensuring that the adoption process is completed in an expeditious manner. See *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070; *In re Adoption of Ridenour* (1991), 61 Ohio St. 3d 319, 574 N.E.2d 1055; Also see *In re Adoption of Baby Girl Hudnall* (1991), 71 Ohio App. 3d 376, 594 N.E.2d 45. The Ohio Revised Code, which includes the provisions relating to a putative father, sets forth a statutory scheme in which an adoption may be completed in an expeditious manner. When the statutory adoption process is not followed, the entire matter becomes convoluted with inappropriate stays, irrelevant proceedings in courts without jurisdiction, and protracted litigation. If the statutory adoption process is followed, then this Supreme Court's stated goal of completing the process in an expeditious manner will be met.

The United States Supreme Court acknowledged and accepted the legal basis and the constitutionality of the putative father registry in *Lehr v. Robertson* (1983), 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985. In *Lehr*, the Supreme Court rejected the putative father's claim that, even if

the statutory scheme adequately protected a putative father's opportunity to establish a relationship with his child in the "normal case," he was nonetheless entitled to "special notice" because the trial court and the birth-mother knew that he had filed an affiliation proceeding in another court. In rejecting this argument, the Supreme Court stated:

[t]his argument amounts to nothing more than an indirect attack on the notice provisions of the New York statute. The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. Since the New York statutes adequately protected appellant's inchoate interest in establishing a relationship with Jessica, we find no merit in the claim that his constitutional rights were offended because the Family Court strictly complied with the notice provisions of the statute.

*Lehr*, 463 U.S. at 265.

The ignoring of the clear statutory language relating to an adoption proceeding, the staying of an adoption proceeding to allow the establishment of paternity after the adoption petition is filed, and the allowing of the birth-father to retroactively change his status within the adoption proceeding, is "nothing more than an indirect attack" on the adoption process set forth in the provisions of the Ohio Revised Code. This is exactly what the U.S. Supreme Court would not permit in *Lehr*. "The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme" justifies the requirement that the court adhere precisely to the procedural requirements of the Ohio statutes.

The rights of a putative father in the adoption process gained national attention after the U.S. Supreme Court addressed certain due process issues in *Stanley v. Illinois* (1972), 405 U.S. 645,

31 L. Ed. 2d 551, 92 S. Ct. 1208. The U.S. Supreme Court subsequently addressed putative father issues in: *Quilloin v. Walcott* (1978), 434 U.S. 246, 54 L. Ed. 2d 511, 98 S. Ct. 549; *Caban v. Mohammed* (1979), 441 U.S. 380, 60 L. Ed. 2d 297, 99 S. Ct. 1760; *Lehr v. Robertson*; *Michael H. v. Gerald D.* (1989), 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333. To provide clarity and integrity to the adoption process, to balance the rights of all parties in the adoption process, and to protect the best interests of the children, state legislatures have enacted statutory schemes to address these issues. The true purpose of all of these statutory schemes, including the states that include a putative father registry, is to expeditiously secure the permanency for the child. The putative father must take some responsibility to even become a party in the adoption process. If he fails to timely register, or whatever the state statute requires, the putative father has failed to demonstrate his interest. If he does register, or otherwise secure his right to be heard pursuant to the state statute, there may be additional requirements that the state may impose relating to the putative father's full commitment. The Ohio legislature decided that the putative father is entitled to notice if he timely registers, but his consent may not be required if he abandons the birth-mother during pregnancy or if he abandons the child. This is the statutory scheme enacted by the Ohio legislature. This is the statutory scheme that must be followed in adoption proceedings in all Ohio courts.

The American Academy of Adoption Attorneys believes that children should be recognized as individuals possessed of their own interests and rights, including the right to be part of a stable and permanent family, and the right to remain part of that family once it is established with an expectation that the status will be permanent. These rights are constitutionally founded and are at the core of all liberties. The child's inalienable right to life and liberty in the family context must be

protected. These constitutional interests are both procedural and substantive. Therefore, they should not be disturbed absent a compelling, established competing interest that is entitled to constitutional protection. Even then, if the constitutionally protected interests are in conflict and evenly balanced, the conflict should be resolved in favor of the child.

Courts have increasingly recognized that children have rights under the United States Constitution, and it is unreasonable to remedy any purported breach of a biological parent's rights by curtailing the fundamental rights of the child. In the present case, the child has been in a proper legal adoptive placement since November 2007. The delays in this litigated matter have been caused by the failure to follow the clear statutory adoption process. These delays have resulted in the child becoming fully integrated as a family member in the prospective adoptive family. The rights of the child must be addressed and protected. The lower courts in the present case failed to follow the statutory adoption process and failed to even consider the rights of the child. Only the rights of the birth-father were considered, which has created an equal protection issue under the 14th Amendment. A review of this case by this Supreme Court is critical to ensure that the rights of all parties in adoption proceedings in Ohio, most importantly the child's rights, are addressed.

It has long been recognized that children are persons with rights protected by the United States Constitution. "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." *Planned Parenthood of Central Mo. v. Danforth* (1976), 428 U.S. 52, 74; 49 L. Ed. 2d 788; 96 S. Ct. 2831. "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault* (1967), 387 U.S. 1, 13; 18 L. Ed. 2d 527, 538;

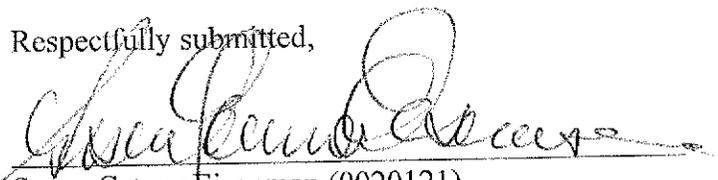
87 S. Ct. 1428, 1436. By not following the statutory adoption process, the rights and best interests of the child are being ignored.

In the present case, the lower courts disregarded the statutory adoption process and did not allow the prospective adoptive parents to present any evidence as to the allegation that the birth-father abandoned both the birth-mother and the child. The lower courts have elevated the rights of the birth-father above the rights of all other parties in the adoption proceeding. This has created an imbalance in the adoption process, which is in contradiction to the balance created by the Ohio legislature. If the statutory adoption process is followed, the rights of all parties can be addressed. If the process is not followed, the whole system breaks down with lengthy delays occurring and additional issues arising. This case must be reviewed by this Supreme Court or there will be an imbalance and uncertainty in all Ohio adoptions involving a putative father. For the protection of the rights of all parties involved, most importantly the rights of the child, the American Academy of Adoption Attorneys respectfully urges this Supreme Court to hear this case.

#### **IV. Conclusion**

For the reasons set forth above, this case involves matters of public or great general interest and involves substantial constitutional questions. The American Academy of Adoption Attorneys respectfully requests that this Ohio Supreme Court grant jurisdiction and allow this case to be heard, so that the important issues presented in this case will be reviewed on the merits.

Respectfully submitted,

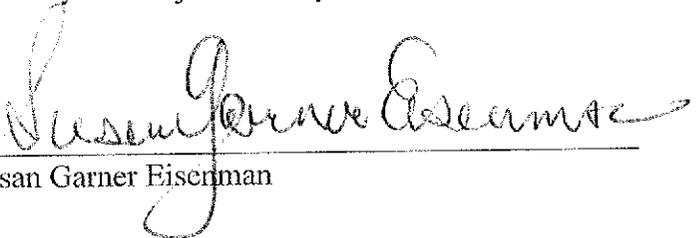


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Certificate of Service

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction has been sent by regular U.S. mail this 11<sup>th</sup> day of January, 2010 to: Michael R. Voorhees, Attorney for Appellants Jason and Christy Vaughn, Voorhees & Levy LLC, 11159 Kenwood Road, Cincinnati, Ohio 45242; Alan J. Lehenbauer, Attorney for Benjamin J. Wyrembek, The McQuades Co. LPA, P.O. Box 237, Swanton, Ohio 43558.

  
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