ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of: G.V.	:	**Supreme Court Case No. 2009-2355**
Jason and Christy Vaughn	:	**On Appeal from the Lucas County Court of Appeals, Sixth Appellate District**
Appellants	:	**Court of Appeals Case No. L-09-1160**
Benjamin Wyrembek	:	**Trial Court No. 2008 ADP 000010 Lucas County Probate Court**
Appellee	:	

MOTION FOR RECONSIDERATION BY APPELLANTS JASON AND CHRISTY VAUGHN

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Now come Appellants, Jason and Christy Vaughn, and pursuant to S.Ct. Prac. R. 11.2, hereby request this Supreme Court to reconsider its slip opinion of July 22, 2010 based upon the following:

The majority's opinion is judicial legislation that is a violation of the separation of powers doctrine and effectively nullifies specific clear and applicable statutory provisions and re-writes the Ohio Revised Code.

The majority failed to address any relevant and applicable portion of any Ohio adoption statute anywhere in its opinion. The majority solely relied upon this Court's own holding in the case of *In re Adoption of Pushcar* (2006), 110 Ohio St. 3d 332, 2006 Ohio 4572, 853 N.E.2d 647. Essentially, the majority has disregarded the entire statutory scheme relating to the adoption process established by the Ohio General Assembly, which is clearly and unambiguously set forth in the Ohio Revised Code. The majority did not even attempt to apply any interpretation to the statutes. The majority simply applied its own holding in *Pushcar* in place of the clear and applicable statutory provisions. This is a blatant example of judicial legislation. The legislature made a clear decision as to the adoption process. The majority has failed to give appropriate deference to the legislation, which is a violation of the separation of powers doctrine. Justice Cupp correctly noted that the role of the Court is to apply clear and unambiguous statutes as written. Under the majority's opinion, a precedent will be established making no Ohio statute safe from circumvention. Based upon this unwarranted judicial legislation, the majority should reconsider its opinion.

The majority held that a pending parenting action in juvenile court stays the adoption proceeding in the probate court, and then the judicial ascertainment of paternity in the juvenile court will retroactively change the status of the putative father in the stayed adoption proceeding in the

probate court, back to the time the adoption was filed. This opinion of the majority is not an interpretation of the applicable statutory provisions. This opinion of the majority re-writes the Ohio Revised Code, re-writes the entire Ohio statutory scheme, and effectively nullifies the following provisions of the Ohio Revised Code: R.C. 3107.01(H); R.C. 3107.06(B)(3); R.C. 3107.061; R.C. 3107.062; R.C. 3107.063; R.C. 3107.064; R.C. 3107.065; R.C. 3107.07(B); and R.C. 3107.11.

The majority has applied different judicial review standards in decided cases within this very same month.

In this Court's opinion in the case of *In re Adoption of J.A.S.,* Slip Opinion No. 2010-Ohio-3270, also decided in this month of July 2010, Justice Lundberg Stratton cited *Lemley v. Kaiser* (1983), 6 Ohio St.3d 258, 6 OBR 324, 452 N.E.2d 1304 for the judicial review standard that the Court "must strictly comply with the statutory requirements in R.C. 5103.16(D)." Now in this case, just days later, the majority has changed its judicial review standard. Not only does the majority fail to address this requirement of strict compliance, the majority totally ignores the statutory requirements set forth in R.C. 3107.

The majority effectively destroys the balance of the rights of the parties in an adoption proceeding and violates the constitutional due process rights of all parties except the alleged unsuitable biological father.

As repeatedly stated in Appellants' many briefs in this case, if a putative father can change his status in an adoption proceeding by filing a paternity suit, whether he registered or not, there can be no further reliance on the Ohio Putative Father Registry. R.C. 3107.07(B) will become meaningless, the entire Ohio statutory scheme that includes the Putative Father Registry will become meaningless, and the entire adoption process in Ohio will fall apart. The members of the

Ohio bar who practice in the adoption area know that this is not an overstatement. It is precisely what will be the result if the opinion of the majority becomes the decision of this Court.

The majority has disregarded the balance of the rights of all parties in the adoption process that is currently in place by the clear statutory scheme. The due process rights of the biological father are protected by the registry. The paternity action is NOT required to protect the birth-father's right to be heard in the adoption proceeding. The adoption proceeding and the paternity proceeding are two separate and distinct actions. The birth-father merely needs to complete the simple task of registering, which Appellee did in this case, and his right to notice and opportunity to be heard is absolutely protected. The majority gives the un-wed biological father all power to disrupt the adoption, with total disregard to the rights of the birth-mother, the legal father, the adoptive parents, and, most significantly, the child. The majority gives this veto power to the un-wed biological father, despite the fact that he may be totally unfit and unsuitable to parent and despite the fact that he may have already abandoned both birth-mother and child. The majority eliminates the requirement that the birth-father must not willfully abandon or fail to care for and support the minor as required under R.C. 3107.07(B)(2)(b). The majority eliminates the requirement that the birth-father must not willfully abandon the mother of the minor during her pregnancy and up to the time of her surrender of the minor as required under R.C. 3107.07(B)(2)(c). The birth-father will only need to file a paternity case prior to the filing of the adoption to forever relieve himself of these statutory obligations. The birth-father will never have to pay the consequences for abandoning the birth-mother during her pregnancy. The birth-father will no longer have the statutory requirement of registering with the Ohio Putative Father Registry. He will only need to timely file his paternity suit in juvenile court. The probate court will no longer have exclusive jurisdiction over the adoption proceeding because the majority stated that the paternity finding

must be retroactively applied in the stayed adoption proceeding. The majority totally eliminates the right to have the abandonment issues under R.C. 3107.07(B)(2)(b) and R.C. 3107.07(B)(2)(c) addressed in the adoption proceeding. The question is: how does this comport "with the requirements of due process and the plain meaning of its provisions" as this Court required in *Pushcar* at 110 Ohio St. 3d 334 ? The answer is that it does not.

The majority's opinion is contrary to legislative intent, but there are less drastic alternatives this Court should consider that may somewhat preserve the balance and integrity of the adoption process.

The statutory requirements, the legislative history, and the legislative intent of the Putative Father Registry were detailed by the Tenth District in the case of *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 737 N.E. 2d 1062 as follows:

> The Ohio General Assembly enacted Am.Sub.H.B. No. 419 in 1996, which altered the existing adoption statutes and created a putative father registry. See *R.C. 3107.062* to 3107.065. Under *R.C. 3107.062*, a putative father must register no later than thirty days after the birth of a child. A search of the registry must be conducted before a final decree of adoption may be issued. *R.C. 3107.064(A)*. *R.C. 3107.06* lists the individuals from whom consent is required for an adoption to proceed, but it specifically provides an exception that 'unless consent is not required under *section 3107.07 of the Revised Code*,' meaning that the exceptions in *R.C. 3107.07* must be explored first. Under *R.C. 3107.07(B)(1)*, consent to adoption is not required of a putative father who fails to register with the putative father registry not later than thirty days after the child's birth. Moreover, *R.C. 3107.061* provides that '[a] man who has sexual intercourse with a woman is on notice that if a child is born as a result and the man is the putative father, the child may be adopted without his consent pursuant to division (B) of *section 3107.07 of the Revised Code*.' Thus, it appears from *R.C. 3107.07(B)(1)* and 3106.061 that the consent of a putative father to an adoption is not required if he fails to register with the putative father registry within thirty days of the child's birth. * * *
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> The Ohio Legislative Service Commission prepared an analysis of Am.Sub. H.B. No. 419, which provides insight into the legislative intent behind the changes to the adoption statutes. 3 Baldwin's Ohio Legislative Service (1996), L-336. The Legislative Service Commission cautions that the final version of bills may be

> different from the legislative analysis because they are subject to floor amendments and conference committee changes. *Id.* According to the analysis, the changes to the adoption laws require a putative father to register with the putative father registry within thirty days of the child's birth or his consent will not be required. *Id.* at L-336, L-346. The original version of *R.C. 3107.07(B)(1)*, as amended by Am.Sub.H.B. No. 419, contained an exception to the requirement of registration within thirty days if the putative father was not able to register within the thirty-day time period for reasons beyond his control, other than a lack of knowledge of the child's birth, but the putative father must register within ten days after it becomes possible for him to register or his consent will not be required. *Id.* at L-287, L-346. However, this exception in *R.C. 3107.07(B)(1)* was removed from the final version of Am.Sub.H.B. No. 419. See *R.C. 3107.07(B)(1)*, effective September 18, 1996. Thus, the General Assembly determined that there would be no exceptions to the thirty-day filing requirement.
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> Given that the legislature did not intend for there to be any exceptions to the registration requirement, that the purpose of the adoption laws is to provide children with a stable home in an expeditious manner, and that adoption laws are to be strictly construed, I conclude that the General Assembly intended in *R.C. 3107.07(B)(1)* to eliminate the necessity of a putative father's consent to an adoption if he fails to register with the putative father registry within thirty days of the child's birth.
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> *Id.* at 136 Ohio App.3d 832-834.

There can be no question that the majority has created an exception to the Putative Father Registry and that such exception is directly contrary to the legislative intent. The majority creates this exception by giving the birth-father total control to disrupt the adoption by the mere *filing* of a paternity action. If this Court is going to create an exception, then the exception should not be in a manner that totally destroys the balance in the adoption process and that tramples the constitutional due process rights of the other parties. The majority should at least give some consideration to the child and to the other parties. Some thoughts on possible alternatives that would not totally destroy the adoption process are listed here below.

1) The mere *filing* of a paternity action does not need to be the total controlling event. This Court could find that the filing of a paternity action in juvenile court prior to the filing the adoption petition be considered the equivalent to registering with the putative father registry. The application

of the paternity results would not be retroactive in the adoption proceeding, but the birth-father could fully participate in the adoption proceeding. If the birth-father met his statutorily required commitment to the birth-mother and to the child, then he could successfully oppose the adoption. This alternative does nullify R.C. 3107.07(B)(1), but at least the entire R.C. 3107.07(B) is not obliterated.

2) Another alternative is this Court could find that the filing of a paternity action in juvenile court prior to the filing the adoption petition confers party status on the birth-father in the adoption proceeding. If the birth-father timely registered, he is already a party and can fully participate in the adoption proceeding. If the birth-father fails to register, but files the paternity action before the adoption is filed, he could intervene as a party and object to the adoption on the basis of best interest. His consent would still not be required pursuant to R.C. 3107.07(B)(1), but he could still fully participate as a party during the best interest hearing. This alternative does nullify R.C. 3107.11, but at least the entire adoption is not wrongfully usurped and the focus is redirected where it should be focused, which is the best interest of the child.

In ignoring the statutory requirements, the majority apparently believes that a unwed man who has a pending parentage action has done "enough" to protect his rights. Again, it is important to note how the U.S. Supreme Court addressed this issue. In *Lehr*, the U.S. Supreme Court stated:

> The difference between the developed parent-child relationship that was implicated in *Stanley* and *Caban*, and the potential relationship involved in *Quilloin* and this case, is both clear and significant. When an unwed father demonstrates a full commitment to the responsibilities of parenthood by '[coming] forward to participate in the rearing of his child,' *Caban, 441 U.S., at 392,* his interest in personal contact with his child acquires substantial protection under the Due Process Clause. At that point it may be said that he '[acts] as a father toward his children.' *Id., at 389, n. 7.* But the mere existence of a biological link does not merit equivalent constitutional protection. The actions of judges neither create nor sever genetic bonds. '[The] importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in '[promoting] a way of life' through the

> instruction of children ... as well as from the fact of blood relationship.' *Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 844 (1977)* (quoting *Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972))*. n17
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> *Lehr*, 463 U.S. at 261.

In the present case, Appellee has "come forward" by registering with the Ohio Putative Father Registry and by filing a paternity action. However, the issue is to determine whether this birth-father has demonstrated a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child. The allegation is that he has NOT demonstrated a full commitment to the responsibilities of parenthood because he has abandoned both birth-mother and child. This should be an issue for the probate court to decide in the adoption proceeding. The majority should, at the very least, reconsider its opinion by considering less drastic alternatives that do not totally destroy the balance in the adoption process.

The majority misapplied its own holding in *Pushcar* by failing to apply the "judicial ascertainment of paternity" requirement that this Court applied in *Pushcar.*

The majority states that *Pushcar* is dispositive of the issue in this case. However, the majority fails to follow its own holding in *Pushcar*. The holding by this Court in *Pushcar* was as follows:

> In this case, the appellant could not meet his burden of proving by clear and convincing evidence that the exception to the consent requirement under *R.C. 3107.07(A)* was satisfied. The requisite one-year period set forth in the statute could not begin to run until a ***judicial ascertainment of paternity*** -- a matter unresolved when the appellant filed his adoption petition. Moreover, given that there was a proceeding pending in the juvenile court when the appellant filed his petition for adoption, the probate court should have deferred to the juvenile court and refrained from proceeding with the adoption petition until the juvenile court had adjudicated the pending matter. (*emphasis added*)
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> *Id.* at 110 Ohio St. 3d 335.

The defining event in *Pushcar*, upon which controlled all matters pertinent in the case, was the "judicial ascertainment of paternity." Not the *filing* of the paternity case, but the actual moment in time when a court established paternity by court entry. That is the precise issue in the present case. The "judicial ascertainment of paternity" must be prior to the date the adoption petition is filed or the birth-father is a putative father in the adoption proceeding pursuant to the clear definitions set forth in R.C. 3107.01(H)(3) and R.C. 3107.06(B)(3). In *Pushcar*, this Court cited the case of *In re Adoption of Sunderhaus* (1992), 63 Ohio St.3d 127, 585 N.E.2d 418 and reaffirmed that "[e]stablishing the parent-child relationship requires 'judicial ascertainment of paternity.'" *Pushcar* at 110 Ohio St. 3d 334. Therefore, this Court applied the "judicial ascertainment of paternity" requirement to R.C. 3107.07(A) in *Pushcar*, but now in the present case the majority has refused to apply this same "judicial ascertainment of paternity" requirement to R.C. 3107.01(H)(3) and R.C. 3107.06(B)(3). There is no valid distinction in the application of this requirement to these statutes and the majority should reconsider its opinion based upon this inconsistent application of the "judicial ascertainment of paternity" requirement.

The majority creates a "race to the courthouse" that never existed before.

In *Pushcar*, this Court cited the case of *In re Adoption of Asente* (2000), 90 Ohio St. 3d 91, 2000 Ohio 32, 734 N.E.2d 1224 and stated "we have also recognized 'the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter.' *In re Adoption of Asente (2000), 90 Ohio St.3d 91, 92, 2000 Ohio 32, 734 N.E.2d 1224."* *Pushcar* at 110 Ohio St. 3d 334. The majority's opinion creates a "race to the courthouse" that never existed before.

The present case involves a placement of a newborn through an Ohio agency with prospective adoptive parents in another state, which required ICPC (Interstate Compact on the Placement of Children) approval. In such a case, the filing of the adoption petition in probate court is not immediate. It requires the gathering of documents and the drafting of the petition and many other required documents. Some Ohio probate courts require all documents, including the Putative Father Registry Certification form, to be obtained or prepared prior to filing the adoption. The time required to prepare the filing has never been a concern relating to the putative father because of the statutory definition of putative father in R.C. 3107.01(H). It has not been an issue in most Ohio probate courts because the probate courts have correctly interpreted the statute to require paternity to be established prior to the filing of the adoption petition and, if he did not, the birth-father is a putative father in the adoption proceeding. The adoption then proceeded in an orderly manner with the determination of whether or not the consent of the putative father is required. There has never been a "race to the courthouse" because the status of the birth-father at the time of the filing of the adoption petition established his status in the adoption proceeding. If there was no "judicial ascertainment of paternity" or other statutorily recognized establishment of paternity that existed on the date the adoption petition was filed, the birth-father was a "putative father" in the adoption proceeding and his status did not change during the entire pendency of the adoption proceeding. If there was a "judicial ascertainment of paternity" or other statutorily recognized establishment of paternity prior to the date the adoption petition was filed, the birth-father was a "parent" in the adoption proceeding and different statutory provisions applied in the adoption proceeding. See *In the Matter of Adoption of Baby Boy Brooks*. The majority must realize that its opinion will change Ohio law and will create a "race to the courthouse" that never existed before and will change the entire adoption process in Ohio when a putative father is involved.

The majority stated that when an issue concerning parenting is *pending* in the juvenile court, a probate court must refrain from proceeding with the adoption of that child. The opinion states *pending*, which by applying *Pushcar* and *Asente* should be interpreted as requiring that the paternity action to be already pending in the juvenile court prior to the filing of the adoption petition. There is a risk that some courts could misinterpret this opinion to apply to filings in the juvenile court after the adoption petition is filed. The disregard of the statutes will create much confusion and litigation in itself, but such an interpretation that this opinion applies to filings in juvenile court after the adoption is filed will result in the adoption process in Ohio being in a total chaotic state. Ohio law requires the child to be in the home of the petitioners for at least six months before the court can finalize the adoption. If the wrong interpretation is given to the majority's opinion, the following scenario is a real possibility: the birth-mother has an untimely pregnancy; the birth-father provides no support to the birth-mother during her pregnancy; during her pregnancy, the birth-mother considers all her options, including abortion, parenting, safe haven placement, and adoption and decides that it is in the best interest of her child to make an adoption plan; the birth-mother receives appropriate counseling from a licensed adoption assessor; the birth-mother then completes her adoption plan by placing the child when the child is three days old with the prospective adoptive parents; putative father has no involvement during the pregnancy and for the first several months of the child's life and he also fails to register; the petition for adoption is filed and the final hearing is set for six months after placement as required by Ohio law; in the fifth month of the child's life, having showed no interest in the child during the pregnancy and for the first five months of the child's, and with total disregard to the fact that the child is undoubtedly bonded with the adoptive parents and is in a safe, suitable, and stable home, and with total disregard to the wishes of the birth-mother he abandoned, suddenly decides to file a paternity

action and intervene in the adoption proceeding; following the unclear, over-broad, and over-reaching opinion of the majority, the probate court may believe that it must stay the adoption; paternity is established and the adoption is dismissed; a custody battle ensures, which includes bringing the birth-mother into the custody litigation as a party, and which will disrupt the stable environment of the child that the child may never regain. Certainly, the majority did not intend this result and should reconsider its opinion.

Appellants actually won the "race to the courthouse."

The paternity order was issued on March 17, 2009 by the Lucas County Juvenile Court. Appellee initially filed in Fulton County Juvenile Court, which was the county of Appellee's residence. The Judge of the Fulton County Juvenile Court found that Appellee filed in the wrong county. Appellee's paternity case was not pending in the Lucas County Juvenile Court, which is the court that eventually entered the judicial ascertainment of paternity, until February 21, 2008. The adoption petition was filed in the Lucas County Probate Court on January 16, 2008. Therefore, there was no pending matter in the court that eventually entered the paternity order when the adoption was filed. The majority's opinion is based on procedural grounds, rather than substantive grounds. When the adoption was filed, Appellee had no pending case in the appropriate juvenile court. Procedurally, Appellants won the "race to the courthouse." Applying *Pushcar* and *Asente,* the Lucas County Probate Court begun the task of deciding the long-term fate of the child on January 16, 2008, and on that date there was no pending case in the appropriate juvenile court. It has long been established that adoption "embraces not only custody and support but also descent and inheritance and in fact every legal right with respect to the child." *In re Adoption of Biddle* (1958), 168 Ohio St. 209, 214, 6 O.O.2d 4, 152 N.E.2d 105. Therefore, applying *Pushcar* and

Asente, all other courts are to refrain from exercising jurisdiction over that matter. Based upon the fact that the adoption was actually filed first, the majority should reconsider its opinion.

The adoption of a child is an entire process that begins with the decision of the birth-mother to place the child. In this case, the process involved permanent surrenders signed by both legal parents. The surrenders were filed for journalizing with the juvenile court pursuant to R.C. 5103.15 in early November 2007. The adoptive placement by the Ohio agency with the Appellants was made in early November 2007. The Ohio agency made the appropriate filing with the Ohio ICPC office to approve the placement into the State of Indiana. The entire adoptive placement, including ICPC approval, was in effect on November 8, 2007. The filings of the surrenders and with the ICPC offices in Ohio and Indiana, which are all part of the adoption process and proceeding, were all completed prior to any filing by Appellee and prior to his registration with the Ohio PutativeFather Registry. Therefore, part of the adoption was already filed and in place on November 8, 2007. Even the paternity action in the wrong and irrelevant court in Fulton County was filed later in time than the filings of the surrenders and ICPC, which are a required and integral part of the adoption. Therefore, the adoption proceeding was already pending long before Appellee filed anything. This was not a placement that occurred by probate court order. When the petition was filed in the Lucas County Probate Court, the adoptive placement was already in effect and the filing of the adoption petition was the next step in the adoption process, which was initiated on November 1, 2007 with the signing of the permanent surrender by the birth-mother. Therefore, applying *Pushcar* and *Asente,* all other courts other than the probate court included in the adoption process must refrain from exercising jurisdiction over the matter.

<u>The majority's opinion misapplied the cited U.S. Supreme Court cases and is in direct contradiction to *Lehr v. Robertson.*</u>

The majority entirely misses the point in discussing the rights of a "parent." The majority cites the wrong United States Supreme Court cases. There is no question that Appellee was not a "parent" as defined by Ohio law when the adoption petition was filed. A "putative father" is separately defined under Ohio law for good reason. The majority failed to apply the United States Supreme Court case that is directly on point, which is *Lehr v. Robertson* (1983), 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985. The U.S. Supreme Court stated that "the mere existence of a biological link does not merit equivalent constitutional protection." *Lehr*, 463 U.S. at 261. Therefore, the majority is wrong to cite *Santosky v. Kramer* (1982), 455 U.S. 745, 71 L.Ed.2d 599, 102 S.Ct. 1388. "Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Lehr*, 463 U.S. at 260. It is disheartening for the majority to cite *M.L.B. v. S.L.J.* (1996), 519 U.S. 102, 136 L.Ed.2d, 473, 117 S.Ct. 555 and discuss "family association" and "long-term impact on all the concerned parties" as if such comments somehow support Appellee's position. Appellee has no relationship, other than biological, with this child. This child has been with the Appellants his entire life. Appellants and this child have a real parent-child relationship. This child has bonded familial relationships with the Appellants, with Appellants' other children, and with Appellants' parents and other family members. If this Court is going to based its decision on important family association, it must consider the child's bonded relationships. This Court should ask: why did the birth-mother place this child and why does she continues to support the adoption? The answers to these questions would have been before this Court if the law had been followed by allowing the Appellants to have their day in court and present the evidence on the allegations made under the applicable statutes of R.C. 3107.07(B)(2)(b)

and R.C. 3107.07(B)(2)(c). If the majority's opinion becomes the decision of this Court, Appellants and the child will be precluded from having their day in court and the alleged misdeeds of Appellee will not be addressed. Appellee was a putative father when the adoption petition was filed. Appellee's only connection to the child is that he was later determined to be the biological father and, again, as the U.S. Supreme Court has stated "the mere existence of a biological link does not merit equivalent constitutional protection." *Lehr*, 463 U.S. at 261. Appellee's "parental" rights were not an issue when the adoption proceeding began. Even "parental" rights are not without limits as the United States Supreme Court addressed as follows:

> A parent's rights with respect to her child have thus never been regarded as absolute, but rather are limited by the existence of an actual, developed relationship with a child, and are tied to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this Court's assumption that a parent's interests in a child must be balanced against the State's long-recognized interests as *parens patriae*, see, *e.g.*, *Reno v. Flores, 507 U.S. 292, 303-304, 123 L. Ed. 2d 1, 113 S. Ct. 1439 (1993); Santosky v. Kramer, 455 U.S. at 766; Parham, 442 U.S. at 605; Prince v. Massachusetts, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438 (1944),* and, critically, the child's own complementary interest in preserving relationships that serve her welfare and protection, *Santosky, 455 U.S. at 760.*
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> *Troxel v. Granville* (2000), 530 U.S. 57, 88; 147 L. Ed. 2d 49; 120 S.Ct. 2054.

This child has been in a proper legal adoptive placement since he was just days old. The child is integrated into Appellants' family, not Appellee's family. If the law had been followed and the clear Ohio statutory provisions appropriately applied, this adoption process would have concluded expeditiously in the Probate Court two years ago. When the law is not followed, such as in this case, the child is left in "legal limbo" as stated by Justice Cupp, and the child has become so deeply embodied into the Vaughn family that any disruption will undoubtedly cause harm to the child. There is already a psychological report completed that states such a disruption would case harm to the child. The report is not part of the record in this case, but this Court can certainly take

judicial notice of the certainty that this child would be harmed by disruption. This is not an issue for later proceedings. This is an issue for this Court to consider right now. Permanency for this child is at issue and, if this Court will just acknowledge the constitutional due process rights of the parties to have this case heard, the issue will be addressed in the adoption proceeding.

The United States Supreme Court acknowledged and accepted the legal basis and the constitutionality of the putative father registry in *Lehr v. Robertson.* The constitutionality of the Ohio Putative Father Registry was not an issue before this Court. However, the majority's opinion renders the Ohio Putative Father Registry as meaningless in this case without declaring any statute unconstitutional. The majority did not even address any constitutional issues, although Appellants have argued constitutional issues during this entire case, including in the Probate Court, in the Court of Appeals, and in this Supreme Court. There is a presumption that a statute is constitutional. See *Ohio Grocers Ass'n v. Levin* (2009), 123 Ohio St. 3d 303, 2009 Ohio 4872, 916 N.E.2d 446. This Court has no authority to invalidate a clear statutory provision without declaring it unconstitutional. If a statute is not unconstitutional, this Court must apply its clear and unambiguous meaning.

The majority failed to even acknowledge the policy considerations relating to the best interest of the child.

The most relevant question in any matter involving a child is to consider the best interest of the child. It is the best interest of the child that must be paramount. The child has rights, including constitutional rights, that are independent of any parent or custodian. The child in this case was placed for adoption by his birth-mother because she believed it was in the child's best interest. Appellants were at the hospital when the child was born. The child has been in an adoptive

placement with Appellants since he was several days old. This 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. The opinion of the majority is in direct contradiction with this Court's own holding in *Zschach.* The failure to follow the clear statutory adoption process set forth in the Ohio Revised Code, which balances and protects everyone's rights, will delay the process and will not protect the best interest of the child. Without any consequences for his alleged abandonment of birth-mother and child, and without total disregard and disrespect for the birth-mother and her wishes, Appellee is attempting to deny this child the permanent and stable home that this adoptive placement has provided and will forever provide, if the law is followed.

The majority's opinion will have a devastating impact on the adoption process and on Ohio children and the judicial legislation in this opinion could set a dangerous precedent.

If the majority's opinion becomes the decision of this Court, the result will be a chilling effect upon all adoptions in Ohio. Faced with such an uncertain adoptive process in Ohio, far less people will be willing to become so emotionally invested in a child who could be taken from their home. Therefore, the number of suitable homes for Ohio children will become more limited. Many more birth-mothers may decide to move out of Ohio during their pregnancies due to these uncertain Ohio laws and place under another state's laws that favor early permanency for a child, rather than discourage early permanency for a child, like the majority's opinion. Many more birth-mothers will be forced into unwanted parenting situations, with a lifetime of undesired involvement with the birth-father. Many more women will choose abortion to avoid the entire situation, in

particular to avoid any further contact with the birth-father. This is not speculation and anyone with extensive adoption experience knows that these occurrences will result from this opinion.

The majority's opinion will be create more uncertainty, more confusion, more adoption litigation, more custody litigation, more abuse, neglect, and dependency cases, more unwanted parenting situations, more safe haven placements, and more abortions. The already over-burdened juvenile courts will be clogged beyond belief. None of this protects and promotes the best interest of the child. This will be a major set-back in child welfare law in Ohio. However, this can all be avoided if the law and the clear statutory adoption process are followed. For these critical policy considerations alone, the majority should reconsider its opinion.

The majority's opinion would extend beyond the adoption statutes. The majority creates an exception to the clear statutory requirements relating to the Ohio Putative Father Registry by totally disregarding the statutory provisions and by totally disregarding the Ohio legislature. If the clear statutory requirements do not need to be followed in this case, then there will be a precedent for creating exceptions to any and all statutory requirements. This will be the case that will be cited in all attempts to circumvent any statutory requirement. The majority's opinion has great potential to wreak havoc upon Ohio's entire's legal system. The statutory language of R.C. 3107.01(H)(3) that paternity must be established *prior* to the date a petition to adopt the child is filed could not be more clear and more unambiguous. If this clear and unambiguous statutory language can be ignored by the court, then any statute could be ignored. Ohio citizens will have no notice of the law and its legal requirements. There will be a potential for many arbitrary decisions from the courts. In addressing this Motion for Reconsideration, this Court must consider all consequences and the impact of this decision.

Conclusion

For the reasons set forth above, including preserving the integrity of the adoption process and, most importantly, to promote and protect the best interest of the child, Appellants respectfully request this Supreme Court to reconsider its opinion and to enter a new opinion that will REVERSE the decision of the Sixth Appellate District and REMAND the matter for further proceedings.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing Appellants' Motion for Reconsideration has been sent by regular U.S. mail this 28th day of July, 2010 to: Alan J. Lehenbauer, Attorney for Appellee, The McQuades Co. LPA, 105 Lincoln Ave., P.O. Box 237, Swanton, Ohio 43558.

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