

# In the Court of Appeals of Maryland

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NO. 79

SEPTEMBER TERM, 2015

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MICHELLE L. CONOVER,

*Petitioner,*

v.

BRITTANY D. CONOVER,

*Respondent.*

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On Writ of Certiorari to the Court of Special Appeals of Maryland

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**BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF SOCIAL  
WORKERS AND ITS MARYLAND CHAPTER IN SUPPORT OF PETITIONER,  
MICHELLE L. CONOVER**

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## STATEMENT OF AMICUS CURIAE

Established in 1955, the National Association of Social Workers (“NASW”) is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. The Maryland Chapter of NASW has 3,300 members.

In line with its mission to ensure the efficacy and quality of practicing social workers, NASW promulgates professional standards, conducts research, and develops policy statements on issues of importance to the social work profession. NASW’s work includes a focus on the psychosocial development and wellbeing of children, and on how that wellbeing may be affected by a child’s environmental, psychological, and interpersonal relationships. Consistent with its published policy statements, NASW supports granting LGBT parents all rights, privileges, and responsibilities that are granted to heterosexual people through comprehensive parental recognition laws at the state level. NASW takes this position—including with respect to child custody, visitation, and the legal recognition of LGBT families—to fully protect children raised in these families.<sup>1</sup> NASW’s policy position on protecting the familial attachments between LGBT couples and their children 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 in this field. Social workers commonly engage with clients in familial settings and provide

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<sup>1</sup> NASW, *Policy Statements: Lesbian, Gay, & Bisexual Issues*, in *SOCIAL WORKS SPEAKS* 198, 202-03 (10th ed. 2015).

counseling on such topics as family transitions, parent-child relationships, adoption, and custodial arrangements. Social workers often testify as expert witnesses in legal proceedings affecting the welfare of children, including custody and visitation hearings, termination of parental rights, parental fitness, foster care and permanency planning, and adoptions.

NASW seeks to participate as *amicus curiae* in this case to inform the Court about key social science research supporting the importance of attachment bonds to a child's healthy development, regardless of the biological or legal status of the parental caregiver, and regardless of the sexual orientation of the parental caregiver. For these reasons, NASW, along with its Maryland chapter, file this brief in support of Petitioner Michelle L. Conover so as to urge the Court to recognize that attachment bonds between children and their parental attachment figures transcend narrow conceptions of legal or biological parentage, and that the state's interest in the wellbeing and psychosocial development of children is best ensured by recognizing such bonds in creating and interpreting relevant law.

### **STATEMENT OF THE FACTS**

NASW accepts for purposes of this brief the facts as presented by Petitioner in her brief to the Court. *See* Pet'r's Br. 4-7 [hereinafter Pet.].

### **SUMMARY OF THE ARGUMENT**

Among social science researchers, there is a firm consensus that children develop attachment bonds with their parents irrespective of shared biology, legal recognition of parental rights, or sexual orientation. Social science researchers have long recognized

that attachment bonds form and are sustained between children and their non-biological parents or parents who are not recognized as such under existing law. Attachment bonds derive from the close interaction, caretaking, and companionship common to parent-child relationships—traits that may apply equally to all parents regardless of shared DNA or legal status.

Moreover, the sexual orientation of a parent is of no consequence to the formation of a child's attachment bonds. LGBT parents form deep and healthy emotional attachment bonds with their children, indistinguishable from any other parent's bond with his or her child. Researchers have found no measurable impact on the development and wellbeing of children raised by LGBT parents as compared to their peers raised by heterosexual parents.

It is equally well established that the formation of such parent-child attachment bonds is central to a child's wellbeing and psychosocial development. Extensive studies show the detrimental effects that may arise from a disruption of the parent-child attachment bond, including such effects as traumatic stress and long-lasting developmental harm.

Michelle Conover's relationship with Jaxon Conover is consistent with the kinds of relationships that give rise to parent-child attachment bonds. Michelle describes herself as Jaxon's primary caregiver, beginning shortly after Jaxon's birth when Brittany returned to work. Pet. at 5. In the two years following Jaxon's birth, Michelle's and Jaxon's interactions evidence a parent-child relationship suggestive of the development of an attachment bond. *See* Pet. at 6 (noting that Jaxon's first words, "da-da," were

directed to Michelle). Indeed, the Court of Special Appeals accepted that “[f]rom a practical, day-to-day perspective, evidence before the circuit court portrayed Michelle as Jaxon’s parent. . . . They lived together as a family for the first seventeen months of Jaxon’s life, and both Jaxon and Brittany referred to Michelle in [parental]-like terms. Michelle also had visitation with Jaxon for nine months after [Brittany and Michelle] separated.” *Conover v. Conover*, 224 Md. App. 366, 389 (2015).

The consensus among social science researchers is that strong parent-child attachment bonds form from relationships like Michelle’s and Jaxon’s. Accordingly, the Court should recognize the significant potential harm to Jaxon, and to all children, if laws are not drafted or interpreted to safeguard the important role of all parental figures in their children’s lives.

In custody and divorce cases, the Court should consider the child’s emotional attachment to his or her parents, not only whether the parents have a biological or formal legal connection with the child, or whether the sexual orientation of the parent fits within traditional notions of family structure. The disruption of emotional attachment bonds formed between a parent and child is antithetical to the state’s interest in promoting the wellbeing and psychosocial development of Maryland children.

For these reasons, a legal framework for custody and visitation determinations should consider the view through which young children see their parental caregivers—a view that is blind to the parents’ legal classification or DNA.

## ARGUMENT

### **I. STUDIES CONFIRM THAT THE FORMATION OF ATTACHMENT BONDS IS CRITICAL TO A CHILD’S HEALTHY DEVELOPMENT**

Decades of research firmly establish that, from their earliest stages of life, children form strong bonds with their primary caretakers. *See, e.g.*, JOHN BOWLBY, ATTACHMENT 177, 265-68 (2d ed. 1982); MELVIN KONNER, CHILDHOOD 84-87 (1991). These “attachment bonds” have been extensively studied and are defined as “reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver.” BEVERLY JAMES, HANDBOOK FOR TREATMENT OF ATTACHMENT-TRAUMA PROBLEMS IN CHILDREN 2 (1994). A child’s ability to form and sustain attachment bonds plays a critical role in the formation of “their concepts of self, others and the world.” *Id.* Indeed, “[m]ore than six decades of research confirms that attachment relationships in childhood are necessary for the development” of both a child’s sense of self and key interpersonal skills such as “social competence,” adaptability, and communicative abilities. *See* Joseph S. Jackson & Lauren G. Fasig, *The Parentless Child’s Right to a Permanent Family*, 46 WAKE FOREST L. REV. 1, 16 (2011). Attachment bonds are, put simply, “the central foundation from which the mind develops.” DANIEL J. SIEGEL, THE DEVELOPING MIND: HOW RELATIONSHIPS AND THE BRAIN INTERACT TO SHAPE WHO WE ARE 92 (2d ed. 2012).

Early childhood attachment bonds are fundamental to a child’s sense of self. Neurobiological studies recognize that “emotional interactions with attachment figures appear to be of primary importance in shaping the core (here-and-now) and autobiographical (past-present-future) senses of self” in young children. Daniel J. Siegel,

*Toward an Interpersonal Neurobiology of the Developing Mind: Attachment Relationships, "Mindsight," and Neural Integration*, 22 INFANT MENTAL HEALTH J. 67, 82 (2001) [hereinafter *Mindsight*]; see also Jackson & Fasig, *supra*, at 21 ("The developing attachment relationship spurs the creation of neurological pathways in the child's brain that lead to psychological advances, including the emergence of a sense of self."). And social science emphasizes the role that such attachments play in the creation of a child's "emotional security," "self-esteem[,] and self-worth." Am. Acad. of Pediatrics, Comm. on Early Childhood, Adoption, and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145, 1146 (2000) [hereinafter *Foster Care*].

A child's attachment to a parent also plays a significant role in the child's development of social and interpersonal skills. "Decades of research on early parent-child relationships" establish that attachment bonds "influence developing personality, social skills, . . . and understanding what other people are like." Ross A. Thompson & Miranda Goodman, *Development of Self, Relationships, and Socioemotional Competence: Foundations for Early School Success*, in HANDBOOK OF CHILD DEVELOPMENT AND EARLY EDUCATION: RESEARCH TO PRACTICE 147, 161 (2009). The formation of such bonds has also been credited with the development of a "social conscience," *Foster Care, supra*, at 1146, and impacts "what young children learn, how they react to the events and people around them, and what they expect from themselves and others." NAT'L RESEARCH COUNCIL & INST. OF MED., FROM NEURONS TO

NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 226 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000) [hereinafter NEURONS].

Moreover, attachment bonds with parental figures are essential to the child's ability to interact with the larger world, including through the development of stress management skills, emotional stability, and learning. Studies have shown that "securely attached children appear to have a number of positive outcomes in their development," *Mindsight, supra*, at 77, including "emotional growth, emotional regulation, [and] learning and cognitive growth." NEURONS, *supra*, at 226. Social science studies further show that attachment bonds "provide the child with protection against harm and with a sense of emotional security." James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. CHILD PSYCHOL. & PSYCHIATRY 115, 118 (2005). Attachments thus serve to "reduce[] a young child's fear in novel or challenging situations and enable[] the child to explore with confidence . . . and to manage stress." NEURONS, *supra*, at 230. Critically, the positive effects of early emotional attachment continue as the child ages and enters an expanding social circle. For example, one study has shown that attachment during infancy helped prevent children from developing anxiety and assisted in their ability to cope with stress when they reached school age. See Danielle H. Dallaire & Marsha Weinraub, *Infant-Mother Attachment Security and Children's Anxiety and Aggression at First Grade*, 28 J. APPLIED DEV. PSYCHOL. 477, 489 (2007).

## **II. ATTACHMENT RELATIONSHIPS DEVELOP REGARDLESS OF A BIOLOGICAL OR LEGAL CONNECTION BETWEEN PARENT AND CHILD AND WITHOUT REGARD TO SEXUAL ORIENTATION**

Decades of research have firmly dispelled the notion that children only form attachment bonds and develop warm familial relationships in historically traditional, two-parent, heterosexual family settings. Rather, studies have concluded that “[c]hildren’s optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular [familial structure] that it takes.” Am. Acad. of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341, 341 (2002) (reaffirmed Feb. 2010); *see also* Raymond W. Chan et al., *Psychological Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 CHILD DEV. 443, 454 (1998) (“Children’s well-being is more a function of parenting and relationship process within the family [than] household composition or demographic factors.”). Attachment bonds do not require a biological or legal link between the child and parental figure, and a parent’s sexual orientation is irrelevant to the creation of strong and healthy attachment relationships.

### **A. Children form attachment relationships regardless of the biological relationship to their caregivers.**

Attachment relationships are primarily emotional. Because attachment relationships develop based on “day-to-day interaction, companionship, and shared experiences,” the attachment “role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult.” JOSEPH GOLDSTEIN ET AL., BEYOND THE

BEST INTERESTS OF THE CHILD 19 (2d ed. 1979). It is the “process of parenting . . . in the psychological rather than the biologic sense” that gives rise to attachment bonds between parent and child. *Foster Care, supra*, at 1146. Children form attachments to 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.” GOLDSTEIN ET AL., *supra*, at 98; *see also* Jude Cassidy, *The Nature of the Child’s Ties*, in HANDBOOK OF ATTACHMENT: THEORY, RESEARCH & CLINICAL APPLICATIONS 3, 12 (Jude Cassidy & Phillip R. Shaver eds., 1999).

For example, a study of families that used assisted reproductive technologies found no evidence that “the missing genetic link” impacted the depth or centrality of a child’s attachment to his or her parents. Anne Brewaeys, *Review: Parent-Child Relationships and Child Development in Donor Insemination Families*, 7 HUM. REPROD. UPDATE 38, 44 (2001); *see also* Leslie M. Singer et al., *Mother-Infant Attachment in Adoptive Families*, 56 CHILD DEV. 1543, 1543 (1985) (finding no differences in the quality of mother-infant attachment relationships “between nonadopted and intraracial adopted subjects or between intraracial and interracial adopted subjects”).

**B. Children form attachment relationships regardless of a legally-recognized relationship to their caregivers.**

Young children form attachment bonds with parental caregivers who nurture and support them, not necessarily only with those whom the law recognizes as legal parents. Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20 CHILD & ADOLESCENT SOC. WORK J.

159, 161 (2003). The defining factor relates more to security than legal status. Jackson & Fasig, *supra*, at 35 (finding that, whereas “legal recognition is not itself essential for the child’s development into an autonomous adult,” the defining requirement “is that the family relationships are in fact secure from disruption”). For instance, in the context of foster families, the fostered child “is likely to become securely attached” to his foster figures when the foster home “is ready to invest in him fully.” 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); *see also* Jackson & Fasig, *supra*, at 35 nn.250–51 (surveying literature demonstrating that secure attachment bonds form between foster children and their foster parents, particularly in long-term fostering relationships).

**C. Children form attachment relationships regardless of the sexual orientation of their caregivers.**

Children also form strong attachment bonds regardless of their parents’ sexual orientation. Arguments against LGBT parenting based on child development and outcomes have been thoroughly discredited. Studies focusing on parental sexual orientation have found that such orientation “has no measurable effect on the quality of parent-child relationships.” Am. Acad. of Pediatrics, *Family Pediatrics: Report of the Task Force on the Family*, 111 *PEDIATRICS* 1541, 1550 (2003). Indeed, the vast body of 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.” G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers & Gay Fathers*, in

HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 197, 198 (John C. Gonsiorek & James D. Weinrich eds., 1991).

LGBT parents and their children form emotional attachment bonds identical to any loving parent and child. Recent empirical research involving adolescents adopted by same-sex couples found no “significant group differences by parent sexual orientation (lesbian/gay-heterosexual) in terms of adolescent attachment to parents and peers.”

Stephen Erich et al., *An Empirical Analysis of Factors Affecting Adolescent Attachment in Adoptive Families with Homosexual and Straight Parents*, 31 CHILD. & YOUTH SERVS. REV. 398, 402 (2009). Over the past several decades, multiple researchers have noted the “warm and strong attachments developed between” LGBT parents and their children.

Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in GAY AND LESBIAN PARENTS 30-31 (Frederick W. Bozett ed., 1987). Moreover, “the warmth of the child’s relationship with their nonbiological mother or father” has been found to be the same between children of lesbian-led families and those in heterosexual families.

Fiona Tasker, *Lesbian Mothers, Gay Fathers, and Their Children: A Review*, 26 DEV. & BEHAV. PEDIATRICS 224, 230 (2005).

In view of the strong link between attachment relationships and successful child development, the quality of parent-child attachments in LGBT households is reflected in numerous studies demonstrating that children of same-sex parents are “as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents.” Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children’s Adjustment*, 16 APPLIED DEV. SCI. 98, 104

(2012) (collecting studies conducted over the past 25 years on child development with same-sex parents); *see also* SUSAN GOLOMBOK, MODERN FAMILIES: PARENTS & CHILDREN IN NEW FAMILY FORMS 47 (2015) (summarizing the results of a study that found “children in lesbian mother families did not differ in psychological adjustment from the children in the heterosexual parent comparison groups, and were found to be well-adjusted in relation to population norms”).

### **III. DISRUPTIONS TO A CHILD’S ATTACHMENTS CAN CAUSE THE CHILD TO EXPERIENCE SEVERE EMOTIONAL AND PSYCHOLOGICAL HARM**

The quality of children’s attachment bonds to their parental attachment figures is critical to the children’s development, and the security of the relationship is key to that quality. *See* Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 EARLY CHILD DEV. & CARE 271, 274 (2005) (“[T]he quality of the attachment has profound effects on the child’s social adjustment.”).

Security and the positive developmental effects of the attachment relationship are derived in part from “the continuity of caregiving and interaction style between parent and child.” Jackson & Fasig, *supra*, at 24. When the security of a child’s attachment is threatened by disruptions to or severance of the bond, the child may suffer severe emotional and psychological harm.

#### **A. Disruptions to attachment can cause behavioral, social, and emotional harm to children.**

Where parent-child attachment is disrupted, such disruption can cause significant behavioral, social, and developmental harm to children. Whereas secure attachments in

infants “strongly predict[] preschool characteristics of self-reliance, effective peer relationships (including empathy and affective engagement), and positive relationships with teachers,” insecure attachments often lead to “significantly less competen[ce] in all of these respects” and enhanced aggression and social frustration. W. Andrew Collins & L. Alan Sroufe, *Capacity for Intimate Relationships: A Developmental Construction*, in THE DEVELOPMENT OF ROMANTIC RELATIONSHIPS IN ADOLESCENCE 128 (Wyndol Furman et al. eds., 1999).

It is widely recognized in the social science literature that disruption to the child’s relationship with a primary attachment figure, such as the type at issue in this case, can have long-term negative effects. Many empirical studies predict “long term harm associated with disrupted attachment [relationships].” Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 PSYCHOL. PUB. POL’Y & L. 5, 11 (2004); see also Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297, 303 (2000) (noting the “substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment”).

Numerous studies have identified various behavioral difficulties that arise in young children who have had their attachment relationships disrupted or severed. Some children with “severe detachment disorders” have shown “extreme behavior problems, such as hiding or hoarding food, excessive eating (polyphagia) or drinking (polydipsia), rumination, self-stimulating and repetitive behaviors . . . , and sleep disturbance.” Mark

Simms et al., *Health Care Needs of Children in the Foster Care System*, 106 PEDIATRICS 909, 912 (2000). Other researchers have concluded that parental separation “would be expected to lead to fear/anxiety and accentuate attachment behavior.” Byrne et al., *supra*, at 118.

Disruptions to a child’s existing attachment relationships can also interfere with the child’s ability to create new attachment bonds in the future. When a child’s assumption that he can depend on both parents “proves incorrect, a child may question many other assumptions about the world; for example, whether he or she can count on the availability of *any* parent.” WILLIAM F. HODGES, INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS, AND PSYCHOTHERAPY 8 (2d ed. 1991). The child’s assumptions about the world become warped, such that the child “will anticipate rejection, unpredictability, or even cruelty . . . [e]ven when reality does not indicate these outcomes.” James X. Bembry & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 CHILD & ADOLESCENT SOC. WORK J. 177, 182-83 (1999). These harmful assumptions manifest themselves as impairments in the child’s social behavior, leading to “insecure or avoidant attachment [in future relationships], interference with healthy object relations, and reorganization of cognitive understandings.” HODGES, *supra*, at 8-9.

In addition to the deleterious effects of attachment separation on a child’s development, disturbance of attachment bonds can cause the child to suffer in terms of the child’s sense of self. Children may “conclude that a parent’s absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly

devastating experience.” *Id.* at 9. The child’s experience of “distress about the loss of one beloved person” is difficult to alleviate, even when the child has other attachment figures in his or her life. NEURONS, *supra*, at 235.

**B. The child suffers these harms regardless of the biological or legal status of the disrupted attachment bonds.**

The harms associated with separation are the same regardless of whether the child is biologically or legally related to his or her attachment figure. *See, e.g.*, Gauthier et al., *supra*, at 394 (explaining that foster children experience “much suffering” when removed from their foster families). Likewise, the sexual orientation of the parent is immaterial to the level of disruption suffered by the child. Studies involving children of lesbian parents have found that separation from the parent “can cause [the child] extreme distress.”

FIONA L. TASKER & SUSAN GOLOMBOK, GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT 12 (1997); *see also* Martha Kirkpatrick et al., *Lesbian Mothers & Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 549-50 (1981).

In light of these findings, others have concluded that “children are bonded to both parents, and a legal system that does not recognize the legal rights of both parents is failing to act in the child’s best interests.” Bennett, *supra*, at 171. “[T]he best interests of the child will be served by preserving the continuity and stability of the child’s relationship with both [same-sex] parents.” Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1037 (1992); *see also* Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109

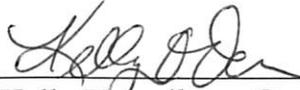
PEDIATRICS 339, 339 (2002) (“Children deserve to know that their relationships with both of their parents are stable and legally recognized. This applies to all children, whether their parents are of the same or opposite sex.”).

### **CONCLUSION**

Decades of social science research support the conclusion that children form invaluable emotional attachments to those who parent them—without regard to shared biology or legally-recognized parental status—and that the severance of such attachments can be detrimental to a child’s sense of security, emotional growth, and social development. In light of the critical importance of attachment bonds between parents and their children, NASW respectfully requests that the Court recognize and protect these bonds.

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**CERTIFICATION OF WORD COUNT AND COMPLIANCE  
WITH RULE 8-112**

1. This brief contains 3,843 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief is written in 13-point Times New Roman and complies with the font, spacing, and type size requirements stated in Rule 8-112.

  
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**CERTIFICATE OF SERVICE**

Pursuant to Md. Rules 1-321 and 8-502(c), I hereby certify that on February 25, 2016, two copies of this motion were served on Petitioner and Respondent by first-class mail, postage prepaid, to each party's respective counsel of record at the following addresses:

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