
SUPREME COURT
Of The
STATE OF CONNECTICUT

S.C. 17716

ELIZABETH KERRIGAN, ET AL.
V.
COMMISSIONER OF PUBLIC HEALTH, ET AL.

**Brief and Appendix of
the *Amici Curiae* Religious Organizations and Clergy
as listed in Appendix at Pages 1-4**

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether excluding otherwise qualified same-sex couples from marriage violates the guarantees of equal protection in the Connecticut Constitution as set forth in Article First, Sections 1 and 20, because

- (a) the exclusion discriminates or segregates on the basis of sex without a compelling state interest;
- (b) the exclusion discriminates or segregates on the basis of sexual orientation without a compelling state interest, or minimally, a substantial relationship to an important state interest;
- (c) the exclusion fails rationally to further a legitimate government purpose.

2. Whether excluding otherwise qualified same-sex couples from marriage deprives same-sex couples of the fundamental right to marry the person of one's choice in violation of the guarantees of due process in the Connecticut Constitution as set forth in Article First, Sections 8 and 10

INTEREST OF THE AMICI CURIAE

Amici Curiae, as more fully listed in the attached Appendix at pages one through four, are religious organizations and members of the clergy who represent a wide variety of religious organizations, faiths and traditions in the State of Connecticut and across the country. *Amici Curiae* are in a unique position to assist the Court in that they represent a rich diversity of faiths and religious practices that, despite their diversity and differences, stand united in strongly supporting the right of adult persons to enter into civil marriage with a partner of the same sex. Recognizing the historical, statutory and constitutionally required differentiation of civil and religious marriage, *Amici Curiae* respectfully submit this brief to counter any argument that the current marriage laws, to the extent that they discriminate against same-sex couples, must be upheld based on deference to particular religious traditions or ideological beliefs. For the Court's reference, specific organizational statements of interest for the *Amici Curiae* that are religious organizations are set forth in the Appendix at pages five through seven.

TABLE OF AUTHORITIES

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ARGUMENT

I. CIVIL MARRIAGE IS A LEGAL STATUS CREATED BY THE STATE, AND IS COMPLETELY SEPARATE FROM THE RELIGIOUS RITE OF MARRIAGE

A. The History of Marriage in Connecticut Underscores the Separate Nature of Civil and Religious Marriage

The history of marriage in Connecticut clearly demonstrates that civil and religious marriage are distinct. The careful separation of civil governance from religious belief has deep historical roots, predating the adoption of Connecticut's constitution by more than 150 years.¹ In Connecticut, and throughout New England, legal tradition and practice departed from Canon law at a very early stage. See Gould v. Gould, 78 Conn. 242 (1905) (contrasting early English and American common law with the canon law). This Court has explained that "[i]mmediately after the establishment of the jurisdiction of Connecticut in January 1638, marriage was taken under the exclusive jurisdiction of the civil authority to be celebrated only by a magistrate, and no clergyman was authorized to join persons in marriage until 1694, and in the execution of this express authority he acted as the agent of the state, and this policy remains unchanged." Id. at 610 (Hamersley, concurring). Consistent with these founding principles, marriage in Connecticut has remained unquestionably a civil institution controlled by the secular state.

B. Civil Marriage is a State-Created and Regulated Status That is Neither Dependent on nor Related to Religious Definitions of Marriage

Connecticut statutory law governs the legal status of civil marriage - including the criteria for who may marry and who may join people in marriage. See Conn. Gen. Stat. § 46b-22. The authority to establish the requirements a couple must meet in order to civilly

¹ See generally, W. Horton, The Connecticut State Constitution: A Reference Guide 2-14 (1993) (describing the historical basis for Connecticut's framework of civil governance, including the extent to which religious freedom is enshrined in the state's Constitution)

marry rests within the exclusive purview of the State and is unaffected by religious doctrine or traditions.

One area in which religious and civil marriage would appear to interact is in the State's permitting solemnization of marriage by religious officials pursuant to Section 46b-22 of the Connecticut General Statutes. This section provides that, in addition to a variety of civil officials, "ordained and licensed clergymen" may perform civil marriages if they meet certain other requirements for doing so. Even, however, when a clergyperson administers a marriage in the context of a religious ceremony, he or she is doing so as an agent of the state and pursuant to the authority provided under the governing statute. Indeed, this Court has made clear that a member of the clergy functions, in the marriage solemnization process, as "a public civil officer, and in relation to this subject, is not at all distinguished from a judge . . . or a justice of the peace, in the performance of the same duty." Carabetta v. Carabetta, 182 Conn. 344, 350 (1980). There is no question then that, both throughout Connecticut's history and into the present, "all authority to join parties in matrimony is basically secular." *Id.* Thus, the statutory provision allowing clergy to solemnize civil marriages does nothing to alter the fact that civil marriage is a creature of the state. Once solemnized, civil marriage is a status that is recognized legally, apart from and irrespective of religious background or whether any particular religious leader or tradition has sanctioned the union.

II. ALLOWING SAME-SEX COUPLES TO CIVILLY MARRY DOES NOT INFRINGE ON THE FREE EXERCISE RIGHT OF ANY RELIGIOUS ORGANIZATION

While the State has the authority to determine which couples may receive a civil marriage license, constitutional guarantees of religious freedom firmly protect the autonomy of individual religious organizations to set guidelines for their own marriage rites. Conn.

Const. Art. 1, § 3²; Atwood v. Welton, 7 Conn. 66, 77-78 (1828) (“no man shall be prohibited from professing whatever religion he pleases, or worshipping in any manner he pleases.”). That the state sets criteria regarding who may marry under civil law has no bearing on the constitutionally protected ability of clergy and faith traditions to set different limits regarding which marriages comport with their tenets. For example, some religious traditions will not perform or even recognize interfaith marriages.³ Similarly, some do not permit or recognize remarriage following divorce.⁴

At the same time, and as discussed in greater detail below, many religious organizations bless and recognize same-sex unions and have even devised special ceremonies, absent civil marriage or civil union rights, to consecrate same-sex couples within their faith traditions. Religious organizations have been able to take these steps to bless, recognize and even perform religious marriages for same-sex couples precisely because of the constitutional right to free exercise embodied by Article First, Section 3, of the Connecticut Constitution.

² Article First, § 3, of the Constitution of the State of Connecticut provides, in its entirety: “The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.”

³ See, e.g., Leadership Council on Conservative Judaism, Statement on Intermarriage (March 7, 1995), available at <http://www.uscj.org/intmar/statement.html> (last visited November 12, 2006) (“Rabbis and cantors affiliated with the Conservative Movement may not officiate at the marriage of a Jew to a non-Jew, may not co-officiate with any other clergy, and may not officiate or be present at a purely civil ceremony.”)

⁴ See Catechism of the Catholic Church – Part Two, Section Two, Chapter 3, Article 7 – The Sacrament of Matrimony, available at <http://www.vatican.va/archive/catechism/p2s2c3a7.html> (last visited November 12, 2006) (“In fidelity to the words of Jesus Christ – whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery”).

Religious autonomy is not threatened by recognizing that same-sex couples have a constitutional right to civil marriage. The religious freedoms embodied in the Connecticut and United States Constitutions guarantee that, in our pluralistic society, diverse religious traditions and beliefs can flourish, even where certain religious organizations and traditions oppose marriage for same-sex couples. Recognizing a constitutional right to civil marriage will not alter those religious freedoms, and will not force those traditions that believe such unions are irreconcilable with their belief systems to marry or recognize same-sex couples.

III. MANY RELIGIOUS ORGANIZATIONS SUPPORT CIVIL MARRIAGE RIGHTS FOR SAME-SEX COUPLES AND ALSO CELEBRATE SAME-SEX UNIONS

Many religious organizations and communities in Connecticut, and around the world, accept and perform religious wedding ceremonies for same-sex couples. Many also fully support civil marriage rights for same-sex couples. The religious organizations and leaders submitting this brief fall squarely within these steadily growing categories. Many of the Amici perform and celebrate weddings for same-sex couples while also supporting the full civil rights of all persons to civilly marry a partner of the same sex. The positions of Amici belie any suggestion that the only stance of religious organizations regarding marriage for same-sex couples is one of opposition.

For example, the Union for Reform Judaism – the largest Jewish movement in North America, with more than 900 congregations and 1.5 million members – fully supports the rights of same-sex couples to enter into civil marriage, and supports its rabbis' decisions to perform religious wedding ceremonies for same-sex couples. The Central Conference of American Rabbis (CCAR), the Reform rabbinical body, passed a resolution in 1996 unequivocally supporting the right of same-sex couples to share equally in the rights of civil marriage. The CCAR resolution specifically recognized that civil marriage is a question of

civil law and thus completely distinct from rabbinic officiation at religious marriages. The CCAR has also been among the leading religious organizations to oppose any federal or state initiatives aimed at denying marriage rights to same-sex couples.

Recently, the Jewish Reconstructionist movement, with over 100 congregations throughout North America, adopted a resolution in favor of full civil marriage equality for same-sex couples. Jewish Reconstructionist rabbis have been expressly allowed to officiate lesbian and gay religious marriages since 1993.

Several notable Christian denominations have also taken very affirming positions toward the lesbian and gay members of their congregations, including supporting equal civil marriage rights for same-sex relationships and permitting their clergy to perform religious marriage ceremonies for same-sex couples. The United Church of Christ (UCC) includes 5,400 U.S. congregations and 1.2 million members. Significantly, at the 25th General Synod of the UCC held in Atlanta on July 4, 2005, delegates voted to adopt the resolution, "Equal Marriage Rights for All." This resolution, which passed with 80% of the UCC's 884 member General Synod voting in favor, caused the UCC's General Synod to become the first national setting of a mainline Christian denomination in the United States to fully endorse civil marriage equality. Additionally, the UCC has expressly allowed its ministers to perform religious marriage ceremonies for same-sex couples for well over a decade.

The Unitarian Universalist Association (UUA), with more than 1,000 congregations across the U.S., also has a long history of caring and support for the civil rights of lesbian and gay people, and expressly provides that its clergy and congregations may celebrate the religious marriages of same-sex couples. In 1996, the UUA Board of Trustees adopted a resolution in support of both civil and religious marriage for same-sex couples. That the

UUA and the UCC traditions both support equal marriage rights for same-sex couples is particularly noteworthy since each traces its history to New England.

The American Friends Service Committee (AFSC) and many individual Quaker institutions also support civil marriage rights for same-sex couples. In its statement supporting equal civil marriage rights, the AFSC rejected the notion that same-sex couples should be offered civil unions so that civil marriage can be reserved exclusively for heterosexual couples. The AFSC stated that “government sanction should be applied equally. All couples should be granted civil union licenses or all should be granted marriage licenses.” In addition, the Episcopal Church, with 2.4 million members nationwide, permits priests, as a matter of pastoral care, to perform liturgies and blessings at weddings between couples of the same sex.

In recent years, coalitions of religious leaders and organizations have formed in support of full civil marriage rights for same-sex couples. One purpose of these coalitions is to counter the incorrect, and yet popularly-held, view that civil marriage rights for same-sex couples somehow contravene religious principles. Another purpose is to demonstrate the diversity of religious viewpoints by showing that many traditions embrace their lesbian and gay members and join them in the quest for equality.

In Connecticut, the “Religious Declaration on Marriage Equality” (“Declaration”) has been signed by more than 160 religious leaders representing a diverse group of religious congregations and traditions . The purpose of the Declaration is to demonstrate the growing support of Connecticut clergy for same-sex marriage and to reiterate the fundamental distinction between civil and religious marriage. The Declaration states, in pertinent part:

We the undersigned unite as one religious voice in unwavering support of marriage for same-gender couples. While we bear witness to a broad range of religious beliefs and practices with regard to marriage for same-gender couples, we believe the State of Connecticut should offer equal treatment under the law to all citizens, including the rights and responsibilities of civil marriage.

As religious leaders we affirm and promote commitment and fidelity in the relationship of marriage. We value the holy covenant of marriage because it creates stable, committed relationships; provides a means to share economic resources; and nurtures the individual, the couple, and children. Good marriages benefit the community and express the religious values of long-term commitment and faithfulness. *Civil Union cannot fully embody these values; only marriage can.* There is no difference in marriages between a man and a woman, two men, or two women.

(Full text of the Declaration is set forth in the Appendix at page eight) (emphasis added).

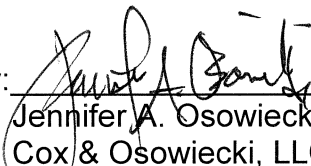
At the same time, it is well-known that some religious entities oppose equal marriage rights for same-sex couples. Civil marriage laws, however, cannot be interpreted to accommodate any of these divergent religious views on who should be permitted to marry or which marriages are worthy of recognition within a particular faith. In light of the bedrock constitutional principles at stake, this Court should plainly reject any claim that religious or traditional values demand that the State discriminate within the institution of civil marriage. Indeed, reliance on any particular religious view (or reliance on “tradition” as a cloak for a particular religious view) as a basis for interpreting Connecticut’s civil marriage laws would run contrary to Connecticut’s Constitutional guarantee that “no preference shall be given by law to any religious society or denomination in the state.” Conn. Const. Art. 7; McLaughlin v. McLaughlin, 20 Conn. Supp. 274, 277 (1957) (“the law is absolutely impartial in matters of religion.”).

CONCLUSION

Amici join with the Plaintiffs in asking this Court to end the discriminatory exclusion of same-sex couples from civil marriage. The issue of marriage equality is a civil, not a

religious, question. Religious organizations have a wide variety of views and beliefs regarding marriage, and their autonomy to maintain those views is not in anyway challenged by the Plaintiff couples who come before this Court seeking equality. Connecticut's long adherence to the constitutional promise of church-state separation means that it may not rely on any particular religious view as a reason to exclude one population of its citizens from civil marriage. Given the foregoing, the undersigned Amici sincerely believe that there is no harm to religious freedom, and indeed only positive benefits for society, if same-sex couples are permitted to marry in Connecticut.

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**Appendix to the Brief of
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Religious Organizations

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**Affirmation: United Methodists for
Lesbian, Gay, Bisexual, and
Transgender Concerns**

American Friends Service Committee

**Connecticut Clergy For Marriage
Equality**

**The General Synod of the United
Church of Christ**

Jewish Reconstructionist Federation

Lutherans Concerned/North America

National Coalition of American Nuns

**The National Catholic Church of
America**

Unitarian Universalist Association

**Saint Wolbodo's Seminary for Old
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Organizational Statements of Interest

Affirmation Gay and Lesbian Mormons

Affirmation Gay and Lesbian Mormons ("Affirmation") is composed of current and former members of the Church of Jesus Christ of Latter-day Saints ("Mormons"), their family and friends. Our mission is to work for the understanding and acceptance of gays and lesbians as full and equal members of this Church and society at large. Affirmation has members or potential members in the State of Connecticut who would be directly affected by the outcome of this case. Affirmation supports and encourages committed relationships however they occur, whether between a man and woman or between two persons of the same gender. We believe immeasurable good comes to both participants and to their community through marriage. As Mormons, we are told that marriage is "for time and all eternity." We have enormous respect for the practice of marriage, and feel that the exclusion of same-sex couples from this institution harms society.

Affirmation: United Methodists for Lesbian, Gay, Bisexual, and Transgender Concerns

Affirmation is an activist, all-volunteer, not-for-profit organization which serves as an independent voice of Methodist Lesbian, Gay, Bisexual, Transgender, and Queer people. Affirmation radically reclaims the compassionate and transforming gospel of Jesus Christ by relentlessly pursuing full inclusion in the Church as we journey with the Spirit in creating God's beloved community.

American Friends Service Committee

In June 1976, the Board of Directors of the **American Friends Service Committee**, founded by the Religious Society of Friends (Quakers) issued a public statement affirming the AFSC's support of the human and civil rights of homosexual and bisexual persons. To further this concern the AFSC included lesbians, bisexuals, and gay men as protected groups in its affirmative action plan and created programs to serve them. In October 1999, recognizing that many persons were claiming that Christianity condemns homosexual relationships, the Board stated: "We particularly deplore any attack on the civil rights of gay, lesbian, bisexual and transgender persons couched in religious terms or attributed to scriptures. The Board believes that human sexual diversity is a gift from God to be celebrated. AFSC believes that exploring our spirituality demands an exploration of our sexuality unconstrained by bigotry and hate."

Although the AFSC Board condemns the use of Christianity as a basis for the denial of basic civil rights to lesbians, gay men, bisexuals, and transgendered persons, it affirms the separation of church and state in the issue of same gender marriage and does not request that the Court force religious bodies to accept or adopt approval of the committed relationships of same-sex couples on religious grounds.

Connecticut Clergy for Marriage Equality

Connecticut Clergy for Marriage Equality is a statewide organization of approximately 160 clergy who have signed onto a Religious Declaration for Marriage Equality. As religious leaders we affirm and promote commitment and fidelity in the

relationship of marriage. We value the holy covenant of marriage because it creates stable, committed relationships; provides a means to share economic resources; and nurtures the individual, the couple, and children. Good marriages benefit the community and express the religious values of long-term commitment and faithfulness. Civil Union cannot fully embody these values; only marriage can. There is no difference in marriages between a man and a woman, two men, or two women. As our traditions affirm, where there is love, God is in our midst.

The General Synod of the United Church of Christ

The General Synod of the United Church of Christ is the representative body of the national setting of the United Church of Christ and is composed of delegates chosen by the Conferences from member churches, voting members of Boards of Directors of Covenanted Ministries who have been elected by General Synod, as described in the Bylaws of the United Church of Christ, and of ex officio delegates. The United Church of Christ and its predecessor denominations have a rich heritage of standing in solidarity with those who are marginalized, oppressed and who suffer under the tyranny of injustice. This denomination has often been the first among Christian churches to take such courageous stands and often when it has been unpopular to do so. Consistently, time has proven that these stands for justice are right for the church and society, and have included such issues as the abolition of slavery, women's rights, mixed race marriage, and the full civil rights of gay, lesbian, bisexual and transgender persons, which most recently includes the right to civil marriage for all couples without regard to gender.

Note: The congregational polity of the United Church of Christ is such that the General Synod may speak to but not for local churches or other settings of the church, which means the recent action supporting marriage equality by the General Synod is not binding on any other setting of the church.

Jewish Reconstructionist Federation

Founded in 1955, the **Jewish Reconstructionist Federation** is the rapidly growing synagogue arm of the Reconstructionist movement, serving more than 100 congregations and havurot spread across North America. People experience Reconstructionist congregations as open, inclusive, and egalitarian, both in principle and in practice. JRF-affiliated communities are autonomous, progressive, and democratic.

Lutherans Concerned/North America

Found in 1974 **Lutherans concerned/North America (LC/NA)** is a pan-Lutheran membership organization with over 50 chapters across North America. LC/NA gathers, equips and empowers Lutherans of all sexual orientations and gender identities to live authentic faithful lives and to bring the church closer to the community envisioned by God. LC/NA is committed to fostering empowerment for individuals and families as well as to systemic change within the church. LC/NA recognizes the important voice of progressive communities of faith in the current debate surrounding civil rights including marriage for persons in same-gender relationships. LC/NA supports marriage equality

across the continent. By action of its board of directors LC/NA has agreed to participate in amicus briefs in support of marriage equality in various states, including the state of Connecticut.

National Coalition of American Nuns

The National Coalition of American Nuns (NCAN) is an organization of approximately 500 Roman Catholic nuns across the United States. Founded in 1969, the organization is dedicated to studying, working and speaking out on issues of human rights and social justice. In 2004, the NCAN board took a public position supporting same-sex marriage. NCAN continues to speak publicly on behalf of respect and non-discrimination toward all persons.

The National Catholic Church of America

The National Catholic Church of America (NCCA) is an autocephalous body of the One, Holy, Catholic and Apostolic Church which has existed since the time of the Apostles, charged with carrying out the mandate of Christ to bring the Good News of salvation to the whole world. The NCCA endeavors to reveal the inclusive love of God for all people and to unite into a worshipping community of love, justice and mercy all those who have been baptized into our Lord Jesus Christ.

Through his death on the cross, Christ embraced all people, refusing mercy and acceptance to none. All Christians are called upon to follow this example. The National Catholic Church of America understands same-sex marriage to be within the ambit of Christ's mandate of acceptance, and teaches that such marriages are sacramentally valid. As a matter both of religious belief and of public policy, to deny a person the right to publicly affirm their love for another is to deny both their rights as a Christian and as a citizen.

Unitarian Universalist Association

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. There are 19 Unitarian Universalist congregations in Connecticut. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular to the case at bar, the Association has adopted numerous resolutions affirming the general principle of separation of church and state as well as specific resolutions and policies concerning the rights of gay and lesbian people as referenced in this brief.

Saint Wolbodo's Seminary for Old Catholic Studies

Saint Wolbodo's Seminary for Old Catholic Studies is the seminary arm of The Society of Pope Saint Anacletus. Saint Wolbodo's Seminary is a unique educational program for those in the Old Catholic, Independent/Progressive Catholic, and the post-denominational Catholic movement. The program in each of these schools is designed to meet the needs of the churches and religious orders who desire to prepare priests to address head on the issues facing Catholics today.

**Text of Religious Declaration on
Marriage Equality, Connecticut Clergy for Marriage Equality**

We the undersigned unite as one religious voice in unwavering support of marriage for same-gender couples. While we bear witness to a broad range of religious beliefs and practices with regard to marriage for same-gender couples, we believe the State of Connecticut should offer equal treatment under the law to all citizens, including the rights and responsibilities of civil marriage.

As religious leaders we affirm and promote commitment and fidelity in the relationship of marriage. We value the holy covenant of marriage because it creates stable, committed relationships; provides a means to share economic resources; and nurtures the individual, the couple, and children. Good marriages benefit the community and express the religious values of long-term commitment and faithfulness. Civil Union cannot fully embody these values; only marriage can. There is no difference in marriages between a man and a woman, two men, or two women. As our traditions affirm, where there is love, God is in our midst.

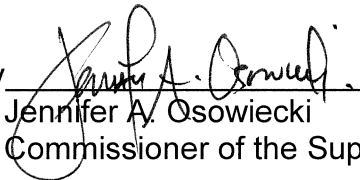
Sacred scripture and tradition call faith communities to justice and compassion, and help provide a mandate for marriage equality. Justice as right relationship seeks both personal and communal well-being. It is embodied in interpersonal relationships and institutional structures, including marriage. Justice demands the elimination of marginalization for reasons of race, gender, sexual orientation, or economic status. We oppose appeals to isolated texts and outmoded traditions. Scriptures which were written in different times and in the context of a very different culture may reflect that culture more than they reflect Divine intent. For example, we believe those texts which absolutely forbid divorce, or require women to be subservient to their husbands, do not express the will of God for our culture.

We respect the fact that debate and discussion continue in many of our religious communities as to the theological and liturgical issues in marriage. We support the right of all religious communities to make their own decisions about whom to marry. However, we draw on our many faith traditions to arrive at a common conviction: the state of Connecticut should allow same-gender couples to share fully and equally in civil marriage.

We offer special thanks to the Religious Coalition for the Freedom to Marry and the Religious Institute on Sexual Morality, Justice, and Healing whose statements on marriage equality served as guides for this declaration.

CERTIFICATE OF COMPLIANCE

THIS IS TO CERTIFY THAT the foregoing brief complies with all of the provisions of Practice Book Section 67-2, as amended and in effect January 1, 2004.

By  _____
Jennifer A. Osowiecki
Commissioner of the Superior Court

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed via first class mail,
postage prepaid, this 12th day of December, 2006, to:

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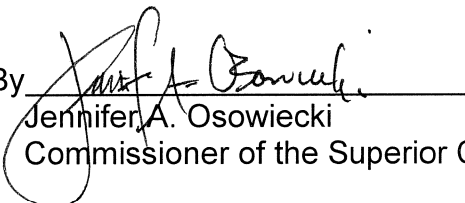
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