

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)	
)	
and)	
)	Case No. CF-2004-4801
THERESA LEE HERNANDEZ,)	
Defendant.)	
)	

**MOTION TO FILE AMICUS BRIEF AND AMICUS BRIEF IN SUPPORT OF THE
MOTION TO DISMISS THE INFORMATION IN *STATE V. HERNANDEZ***

COMES NOW Douglas Parr, attorney for the *Amici*, and moves this Honorable Court to accept the Amicus Brief In Support of the Motion to Dismiss the Information in *State v. Hernandez*.

STATEMENT OF INTEREST

Amici include Oklahoma and national physicians, nurses, counselors, social workers, public health practitioners, and their professional associations.¹ These individuals and organizations have recognized expertise and longstanding concern in the areas of maternal and neonatal health and in understanding the effects of drugs and other substances on users, their families and society, and the ways those effects can best be minimized. *Amici* join this brief because the prosecution of Ms. Hernandez cannot be reconciled with evidence-based, peer-reviewed, medical and scientific research.

INTRODUCTION AND SUMMARY OF ARGUMENT

On April 17, 2004, Theresa Hernandez's 32 weeks of pregnancy ended in a stillbirth. Shortly thereafter, the District Attorney charged Ms. Hernandez, a low-income mother of five, with first and second degree murder based on the claim that her use of methamphetamine during pregnancy caused the stillbirth. This unprecedented prosecution

¹ Descriptions of the *amici* are set forth in Appendix A of this brief.

seeks to make the state's homicide laws applicable to the context of pregnancy loss. Such an interpretation of the state laws shifts pregnancy loss from a medical and public health matter (occasioning treatment and support) to a criminal one, requiring forensic investigation and state sanctioned punishment which has devastating implications for maternal and fetal health.

While *Amici* would never suggest that ingestion of methamphetamine during pregnancy is in any way benign, it is our obligation to note that as a matter of medical science, the effects of in utero exposure to methamphetamine are not well-established and as yet no link has been found between exposure to methamphetamine and pregnancy loss. Stillbirth is associated with a vast array of conditions, activities, and inactions during pregnancy, ranging from working in a dangerous environment to carrying a multi-fetal pregnancy to term. Indeed, pregnancy risks inherent in the use of two substances, cigarettes and alcohol, far more commonly used than all illegal drugs combined, have been extensively documented for many years.

There is however, extensive evidence that responding to issues of drug use and pregnancy through threats of arrest and prosecution will undermine the health of women and children. Moreover, medical, scientific and social science research fail to support the numerous assumptions that this prosecution rests on, among these: that addiction is simply a matter of willpower, that pregnant women can guarantee the outcome of their pregnancies, and that the insertion of the criminal justice system into the delivery room will protect children. Accordingly, *amici curiae* respectfully urge this Court to dismiss the homicide charges pending against Ms. Hernandez.

I. Judicially Reinterpreting Homicide Law As Sought by the Prosecution Will Harm the Health and Welfare of Pregnant Women and Children of Oklahoma.

Over the course of nearly two decades, every leading medical organization,

governmental body, and nearly every court to consider the question has concluded that responding to issues of drug use and pregnancy through the criminal justice system is likely to produce even worse outcomes for children. Fear of prosecution operates as a deterrent to pursuing drug treatment, prenatal care, and labor and delivery care, and it discourages disclosure of critical medical information to health professionals – all with potentially devastating results. Finally, given the realities of drug addiction, the difficulty of obtaining appropriate treatment, and the nature of recovery, laws that threaten women who seek to carry their pregnancies to term with homicide prosecution in the event a miscarriage or stillbirth occurs place substantial pressure on women to terminate wanted pregnancies.

A. Expansion of the Homicide Law to Women Suffering Stillbirths Will Deter Drug-Dependent Women from Seeking Health Care.

Researchers and courts long ago determined that punishing drug-dependent pregnant women for drug use severely threatens the health of their fetuses because fear of criminal prosecution can trigger a “flight from care.” Poland, et al., *Barriers to Receiving Adequate Prenatal Care*, AM. J. OB. & GYN., 297-303 (1987). As the U.S. Supreme Court recently observed, there is “near consensus in the medical community” that addressing problems of drug use and pregnancy through the criminal justice system will “harm, rather than advance the cause of prenatal health.” *Ferguson v. City of Charleston*, 532 U.S. 67, 84 n.23 (2001) (noting the *amicus* submissions of numerous public health organizations concluding that searching pregnant women for evidence of drug use and facilitating their arrest will harm prenatal health by discouraging women from seeking prenatal care.) State courts have similarly adopted the medical professionals’ conclusion that criminal penalties for drug use during pregnancy are ineffective public policy and endanger fetal health by discouraging

care. *State v. Luster*, 419 S.E.2d 32, 35 (Ga. App. 1992); *State v. Deborah J.Z.*, 596 N.W. 2d, 490, 495 (Wis. App. 1999).

Eminent medical organizations, including the American Medical Association, have uniformly condemned punitive approaches to the problem of drug use during pregnancy. *Legal Intervention During Pregnancy*, 264 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (“JAMA”) 2663, 2670 (1990) (“[c]riminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus are inappropriate.”) The March of Dimes, the American College of Obstetricians and Gynecologists, and the American Academy of Pediatrics also condemn this approach as dangerous to both women and children. (See March of Dimes, *Statement on Maternal Drug Abuse I* (1990) (“[making a] pregnant woman criminally liable solely based on the use of drugs during pregnancy, is potentially harmful to the mother and to her unborn child.... Fear of punishment may cause women most in need of prenatal services to avoid health care professionals.”); see also *Appendix*.)

Research confirms that threats of punishment undermine rather than advance state interests in encouraging healthy pregnancies and improved birth outcomes. Studies of drug-dependent pregnant women have found that “fear and worry about loss of infant custody, arrest, prosecution, and incarceration for use of drugs during pregnancy” is “the[ir] primary emotional state.” See Jessup, *Extrinsic Barriers to Substance Abuse Treatment Among Pregnant Drug Dependent Women*, J. DRUG ISSUES (2003); U.S. General Accounting Office, *ADMS Block Grant: Women’s Set Aside Does Not Assure Drug Treatment for Pregnant Women* 5, 20 (1991) (identifying “the threat of prosecution” as a “barrier to treatment for pregnant women.”) In fact, the consensus of both criminal justice and medical professionals

is that the lack of prenatal care associated with criminal prosecution creates a much graver risk to fetal health than drug use during pregnancy. *See* C.J. Sovinski, *The Criminalization of Maternal Substance Abuse: A Quick Fix to a Complex Problem*, 25 PEPP. L. REV. 107-139 (1997) (concluding that “[p]unitive approaches to the problem of substance abuse during pregnancy threaten the health of women and children and seriously erode women’s rights to privacy.”)

The State of Oklahoma has implicitly recognized the danger of discouraging drug-dependent women from seeking care. In 2000, House Bill 2487 proposed criminalizing the abuse of alcohol or other drugs by pregnant women. After debate about the bill’s unintended consequences, it was rechristened as an authorization for a special task force to study the issue of pregnant women who are addicted to drugs or alcohol. HB 2487 (2000), the “Oklahoma Prenatal Addiction Act,” codified as Title 63 Oklahoma Statutes Section 1-546.1. Critics of the original bill pointed out that criminalizing alcohol or drug use would discourage a substantial group of women from seeking any prenatal care in an effort to avoid discovery and prosecution. The legislature’s shift from punitive to educational measures underscores its commitment to maternal and fetal health and concedes the potentially devastating effects that criminal punishment can have.

B. Prenatal Care and Drug Treatment are Vital to Maternal and Fetal Health.

Deterring drug-dependent women from seeking prenatal care and drug treatment is especially troubling because both have been associated with improved maternal and fetal health outcomes. Prenatal care is strongly associated with improved outcomes for fetal development even for women who are not able to overcome their addiction problem before their due dates. For example, pregnant women who use cocaine but who had at least four

prenatal care visits significantly reduced their chances of delivering low birth weight babies. Racine, et. al., *The Association Between Prenatal Care and Birth Weight Among Women Exposed to Cocaine in New York City*, 270 JAMA 1581, 1585-86 (1993); see also, Funai, et al., *Compliance with Prenatal Care in Substance Abusers*, 14 J. MATERNAL FETAL NEONATAL MED. 329-332 (2003).

Drug-dependent pregnant women who are deterred from receiving prenatal care will lose the opportunity for medical interventions needed to address the many co-occurring risk factors such as poor nutrition, and tobacco and alcohol use that are associated with drug use and are associated with poor fetal development. See Tronick & Beeghly, *Prenatal Cocaine Exposure, Child-Development, and the Compromising Effects of Cumulative Risk*, 26 CLIN. PERINATOL. 151-71 (1999) (noting that “[i]nterventions are more likely to succeed if they attempt to reduce the overall burden of risk rather than targeting risks.”)

Research also proves that drug treatment, when available and appropriate, can contribute to healthier pregnancies and pregnancy outcomes. See Sweeney, et al., *The Effect of Integrating Substance Abuse Treatment With Prenatal Care on Birth Outcomes*, 20 J. PERINATOL. 219-24 (2000) (finding that outcomes are “significantly improved for infants born to substance abusers who receive[d] [drug] treatment concurrent with prenatal care.”); Center on Addiction and Substance Abuse (CASA), *SUBSTANCE ABUSE & THE AMERICAN WOMAN* 82 (1996) (“pregnant women in treatment give birth to larger, higher birth weight infants than women who are not in treatment”) (hereafter “CASA REPORT.”)

Indeed, the State of Oklahoma officially recognizes the benefits of drug treatment for pregnant women. Office of Child Abuse Prevention, State Interagency Child Abuse Prevention Task Force, *Oklahoma State Plan: For the Prevention of Child Abuse and*

Neglect, 99 (2004) (hereafter “*Oklahoma State Plan*”). The Legislature noted that the “most effective means of preventing birth defects and health problems due to substance abuse by pregnant women is for prenatal care and appropriate substance abuse treatment services to be readily available and accessible.” (63 Okl. Stat. § 1-546.2.)

C. Those Drug-Dependent Women That Do Seek Treatment Will Be Deterred from Sharing Critical Medical Information with Their Physicians.

The threat of criminal prosecution, particularly for homicide, in the event of a miscarriage or stillbirth will discourage pregnant women from being truthful about drug use, corroding the formation of trust that is fundamental to any doctor-patient relationship. As the U.S. Supreme Court has recognized, a “confidential relationship” is a necessary precondition for “successful [professional] treatment.” *Jaffee v. Redmond*, 518 U.S. 1, 12; 116 S.Ct. 1923, 1929; 135 L.Ed. 2d 337 (1997). Medical treatment is greatly enhanced when patients feel comfortable divulging highly personal, stigmatizing, and potentially incriminating information. *Id.* (observing that a “patient must be willing to tell a physician, who is often a total stranger, about such matters as drug usage”); *see also* American College Obstetrics and Gynecology (ACOG) Committee on Ethics, *At-Risk Drinking and Illicit Drug Use: Ethical Issues in Obstetric and Gynecologic Practice* (Opinion No. 294, 2004) (punitive measures “endanger the relationship of trust between physician and patient . . . [and can] actually increase the risks to the woman and the fetus.”))

Open communication between drug-dependent pregnant women and their doctors is especially critical. Drug use is rarely obvious and typically remains undiagnosed unless disclosed by the patient. *See* Chasnoff, *Drug Use in Pregnancy: Parameters of Risk*, 35 PEDIATRIC CLINICS N. AM. 1403, 1410 (1988); Kelly, et al., *The Detection & Treatment of Psychiatric Disorders and Substance Use Among Pregnant Women Cared For in Obstetrics*,

158 AM J. PSYCH. 213-19 (2001). Even absent the threat of criminal prosecution, drug-dependent pregnant women infrequently report drug use to their doctors. Feelings of shame, fear, and low self-esteem are significant barriers to establishing the trust prerequisite to patients' full disclosure of this medically vital information. See S. Kandall, *SUBSTANCE & SHADOW: WOMEN & ADDICTION IN THE UNITED STATES*, 278-79 (1996). Additionally, the exceptionally high rates of depression among drug-dependent women mean that their prospects of successfully completing treatment depend on their forming a strong "therapeutic alliance" with care providers. See CASA REPORT at 64; *Social Consequences of Substance Abuse Among Pregnant and Parenting Women*, 20 PEDIATRIC ANNALS, 548-552 (1991). Failure to disclose drug use prior to the end of a pregnancy poses special dangers not present in other medical contexts. See, e.g., Campbell, et. al., *Unrecognized "Crack" Cocaine Abuse in Pregnancy*, 77 BRIT. J. ANESTHESIOLOGY 553, 555 (1996).

Because the threat of criminal prosecution discourages drug-dependent pregnant women from open, honest communication with their doctors or from treatment altogether, reinterpreting criminal laws to apply to the context of pregnancy will ironically and tragically contribute to the very adverse pregnancy outcomes that the prosecution in this case claims it seeks to prevent.

D. Prosecuting Women Based on the Outcomes of Their Pregnancies Discourages Women from Carrying Wanted Pregnancies to Term.

A legal regime that threatens prosecution and harsh punishment in the event of an adverse pregnancy outcome creates an extraordinary risk to women who carry their pregnancies to term. Women, who cannot overcome an addiction on pregnancy's timetable, can eliminate such a risk by deliberately terminating a pregnancy. The risk of criminal prosecution thus may induce drug-using women who become pregnant to avoid any potential

criminal prosecution by having an abortion. *Whitner v. South Carolina*, 492 S.E. 2d 777, 787 (S. Car. Sup. Ct. 1997) (*J. Moore dissenting*); see also Heather Sprintz, *The Criminalization of Perinatal Aids Transmission*, 3 HEALTH MATRIX: J. LAW-MED. 495 (1993) (criminal prosecution of prenatal drug use “implicitly advocates for abortion, rather than childbirth, to avoid prosecution.”)

Inducing women to terminate otherwise wanted, healthy pregnancies is manifestly inimical to the purposes this prosecution is intended to serve. This prospect is so dreadful that groups as diverse as NARAL: Pro-Choice America and the National Right to Life Committee, which rarely agree on any issue, have united in opposition to policies that are far less punitive to drug using women than Oklahoma’s. (See *To Stop Abortion by Addict, Her Brother Steps In*, N.Y. TIMES, Feb. 23, 1992, at A16.)

E. Expansion of the State's Homicide Laws will Undermine Accepted Standards of Care for Treating Women Who Suffer Stillbirths

Following stillbirth, parents, and particularly mothers, usually experience intense bereavement and grief. See e.g., L. Hammersley & C. Drinkwater, *The Prevention of Psychological Morbidity Following Perinatal Death*, 47 BRIT. J. OF GENERAL PRACTICE 583 (1997). Feelings of depression, guilt, anxiety, isolation, and bitterness are often heightened when fetal loss occurs late in pregnancy. H. Janssen et al., *Controlled Prospective Study on the Mental Health of Women Following Pregnancy Loss*, 153 AM. J. PSYCHIATRY 226 (1996). Grief is exacerbated by the physical and emotional strain stemming from giving birth to a stillborn child. Consequently, parents who suffer fetal loss often grieve with the same intensity as those who lose a close relative, and need to engage in certain rites and rituals. K. Kobler et al, “*Meaningful Moments: the Use of Ritual in Perinatal and Pediatric Death*,” 32 AMER. J. MATERNAL/CHILD NURSING 288, 290-293 (2007).

As with other momentous medical events, physicians and psychologists have developed treatment protocols to address the psychosocial difficulties that accompany stillbirth. Interpreting the homicide laws to apply to stillbirths and allowing this prosecution to go forward will upend all accepted medical standards for the care of women who suffer stillbirths. See K. Gold, *Navigating Care After a Baby Dies: a Systematic Review of Parent Experiences with Health Providers*, 27 J. PERINATOL. 234 (2007) (“Any hospital which provides obstetrical or pediatric care should establish training and protocol for fetal and infant death.”)

Such an interpretation of the law shifts pregnancy loss from a medical and public health matter (occasioning treatment and support) to a potential criminal act requiring forensic investigation and state sanctioned punishment. As a likely consequence, therapy and support for many women who suffer stillbirths will be compromised and curtailed, if not withdrawn altogether, in the wake of law enforcement needs.

II. Neither Law Nor Medical Science Supports the Application of Oklahoma’s Homicide Laws to Women Who Suffer Pregnancy Losses.

A. The Existing Scientific Record Does Not Support the Popular Assumption That Illicit Drugs Such As Methamphetamine Pose Uniquely High or Well-Established Risks of Harm Including Stillbirth.

Criminal proscription of methamphetamine relates to its potential for abuse and its potential to induce dependence, *see* 21 U.S.C. §. 812, not to any proven unique risk to fetuses. A national expert panel recently reviewed published studies concerning the developmental effects of methamphetamine and related drugs, and concluded that “the data regarding illicit methamphetamine are insufficient to draw conclusions concerning developmental toxicity in humans.” Center For The Evaluation Of Risks To Human

Reproduction, REPORT OF THE NTP-DERHR EXPERT PANEL ON THE REPRODUCTIVE & DEVELOPMENTAL TOXICITY OF AMPHETAMINE & METHAMPHETAMINE (2005), 163, 174.

In 2006, the American College of Obstetrics and Gynecology ("ACOG") created a special information sheet about methamphetamine use in pregnancy, noting that "the effects of maternal methamphetamine use cannot be separated from other factors" and that there "is no syndrome or disorder that can specifically be identified for babies who were exposed in utero to methamphetamine." ACOG, *Information about Methamphetamine Use in Pregnancy* (3/03/06). In 2005, more than 90 leading medical doctors, scientists, psychological researchers, and treatment specialists released an open letter requesting that "policies addressing prenatal exposure to methamphetamines and media coverage of this issue be based on science, not presumption or prejudice" and warning that terms such as "meth babies" lack medical and scientific validity and should not be used. See CESAR Weekly Fax from the Center for Substance Abuse Treatment, Vol 14 Issue 33 (Aug 2005).

Most recently, a peer-reviewed research article concerning stillbirths concluded that "despite widespread reports linking methamphetamine use during pregnancy with preterm birth and growth restriction, *evidence confirming its association with an increased risk of stillbirth remains lacking.*" Silver, *et al.*, *Workup of Stillbirth: A Review of the Evidence*, 196 AMER. J. OBSTETRICS & GYNECOLOGY, 433-444, 438 (May 2007) (emphasis added).

Nearly two decades of experience with misinformation about the effects of *in utero* cocaine exposure counsels that assumptions about illegal drug use must be carefully scrutinized. Previous courts have properly refused to expand the reach of criminal laws to the context of pregnancy based on public fears fueled largely by media accounts and a handful of methodologically flawed research studies suggesting that cocaine use during

pregnancy had yielded a “lost generation” of irretrievably damaged “crack babies.” L. Gómez, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 14 (1997).

Although responsible voices struck a cautionary note by emphasizing that findings concerning biological effects were “contradictory” and that evidence of harm remained “slim” and “inconclusive” See, e.g., Mayes, et al., *The Problem of Prenatal Cocaine Exposure: A Rush to Judgment*, 267 JAMA 406 (1992), a comprehensive analysis of the adverse developmental effects of cocaine exposure did not appear until 2001. The conclusion of the analysis was that the claimed link between prenatal exposure to cocaine and harm to children was largely unfounded. See D. Frank, et al., *Growth, Development, and Behavior in Early Childhood Following Prenatal Cocaine Exposure: A Systematic Review*, 285 JAMA 1613 (2001). The Oklahoma Department of Health has also concluded that the alleged physical and mental developmental delays of “crack babies” have not been experienced as expected. (*Oklahoma State Plan, supra*, 78.)

The principal import of existing research is not that methamphetamine ingestion during pregnancy is "safe," but rather that no legal basis exists for assuming that the risks presented by this drug are any greater than those associated with many other conditions and activities common in pregnancy.

B. Risks Associated With Drug-Dependency Are Not Different In Kind or Magnitude from Other Pregnancy Risks.

As many as 20-30 percent of all pregnancies end in miscarriage or stillbirth. Approximately 26,000 American women experience stillbirths each year, an estimated 247 of whom are from Oklahoma. See MacDorman, Marian, et. al, *Fetal and Perinatal Mortality – United States – 2003*, National Vital Statistics Reports, Center for Disease Prevention and

Control, Volume 55, Number 6, page 12, Appendix B. At least ten percent but as many as fifty percent of all stillbirths go entirely unexplained. *See*, Williams Obstetrics 1073 (F.G. Cunningham et al. eds., 21st ed. 2001) at 1075. *See also* M.A. Sims & K.A. Collins, Fetal Death: A 10-Year Retrospective Study, 22 Am. J. Forensic Med. & Pathology 261 (2001) (“Despite efforts to identify the etiologic factors contributing to fetal death, a substantial portion of fetal deaths are still classified as unexplained intrauterine fetal demise.”); SHARE Pregnancy & Infant Loss Support, Inc., Report on Stillbirth Workshop at the National Institute of Health (Apr. 2001).

http://www.nationalshareoffice.com/about_research_sb_research.shtml

While the causes of stillbirth remain relatively unknown, numerous substances, circumstances and behaviors are *associated* with increased risks of harm including stillbirth - many of the substances are far more well-established and frequently used than all illegal drugs combined and there is far more research supporting an association between those substances and pregnancy outcome. For example, fetal harm and pregnancy loss “resulting” from cigarette smoking are serious and well-established. *See* K. Wisborg, *et al.*, *Exposure to Tobacco Smoke in Utero and the Risk of Stillbirth and Death in the First Year of Life*, 154 AM. J. EPIDEMIOLOGY 322 (2001); *see also* CASA REPORT at 39 (cigarettes are “the single most powerful determinant of poor fetal growth in the developed world.”)

Similarly, potential harm from prenatal exposure to alcohol is significantly more well-established than those associated with prenatal exposure to illegal drugs. *See Oklahoma State Plan, supra*, 77 (“Alcohol has a greater and longer-lasting developmental effect . . . than that of cocaine or other illicit drugs.”); *see also Fetal Alcohol and Drug Effects*, NEUROLOGIST 9(6): 267-279 (2003) (alcohol “is linked to life-long impairments).

There is at least a comparable basis for concern about the potential for serious adverse effects of numerous prescription drugs, including anticonvulsants, mood-stabilizers, benzodiazepines (a class which includes Valium, Librium and Xanax), as well as some antibacterial, anticoagulant, and antihypertensive drugs. See K. Jones, SMITH'S RECOGNIZABLE PATTERNS OF HUMAN MALFORMATION. p. 495 (5th ed. 1997); J Berstein, HANDBOOK OF DRUG THERAPY IN PSYCHIATRY, pp. 407-25 (2d ed. 1988); THE MERCK MANUAL OF DIAGNOSIS AND THERAPY, p. 1859 (R. Berkow ed., 16th ed. 1992.) Accutane, a popular skin medication, has been called "the most widely prescribed birth-defect causing medicine in the United States." E. Rafshoon, *What Price Beauty?* BOSTON GLOBE MAGAZINE (April 27, 2003), p. 15 (Describing confirmed reports of 160 drug-affected births.)

Women who take fertility drugs and choose to carry three or more embryos to term often experience pregnancy loss and risk severe, lifelong harm to the children who survive. B. Steinbock, *The McCaughey Septuplets: Medical Miracle or Gambling with Fertility Drugs?*, ETHICAL ISSUES IN MODERN MEDICINE (5th ed.) 375, 376 (1999) ("Even if they are born alive, 'super-twins' (triplets, quadruplets and quintuplets) are 12 times more likely than other babies to die within a year.") Other factors are also highly associated with stillbirth and poor pregnancy outcomes. See *Kentucky v. Welch*, 864 S.W.2d 280, 283 (Ken. Sup. Ct. 1993), *Reinesto v. Superior Court*, 894 P.2d 733 (Ariz. App. Div. 1995) (identifying poor nutrition, maternal age and genetic make-up as only a few of the many factors that could significantly affect the health of a fetus.)

"Women ages 35 and older who bear children are at a significantly increased risk of giving birth to low birth weight babies and may have increased risk of stillbirth," even when

controlling for diabetes, hypertension, and other complications associated with increased maternal age. *See* Tough, et al., *Delayed Childbearing and Its Impact on Population Rate Changes in Lower Birthweight, Multiple Birth, and Preterm Delivery*, 109 PEDIATRICS 399-403 (March 2002). So do those who suffer from hyperthyroidism and other diseases. *See*, e.g., Atkins, et al., *Drug Therapy for Hyperthyroidism in Pregnancy: Safety Issues for Mother and Fetus*, 23 DRUG SAFETY 229 (2000), and women employed in certain jobs. *See* Johnson Controls, 497 U.S. at 205 (noting that “[e]mployment late in pregnancy often imposes risks on the unborn child”); *see also* Johnson Controls, 886 F.2d 871, 914 & n.7 (7th Cir. 1989) (Easterbrook, J., dissenting) (noting that an estimated 15 to 20 million jobs entail exposure to chemicals that pose fetal risk); Khattak, et al., *Pregnancy Outcome Following Gestational Exposure to Organic Solvents: a Prospective Controlled Study*, 281 JAMA 1106-9 (1999) (finding that pregnant women exposed to organic solvents on the job have a 13-times greater risk of giving birth to babies with major malformations than those not exposed).

Pregnancy outcome is also influenced by actions or inactions women take before ever becoming pregnant. For example, in Oklahoma, 21.5% of women with a recent live birth were not aware of folic acid benefits before they became pregnant, 73.5% did not consume multivitamins at least four times per week during the month before pregnancy, and 84.8% did not receive preconception counseling from a health-care provider. *See* Surveillance of Preconception CDC, MMWR Weekly, *Health Indicators Among Women Delivering Live-Born Infants --- Oklahoma, 2000--2003*, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5625a3.htm>. Finally, pregnancy outcome does not depend on the woman alone. Studies demonstrate that the outcome can also be influenced by male contribution.

See Daniels, C.R. EXPOSING MEN, THE SCIENCE AND POLITICS OF MALE REPRODUCTION, 124 (2006) (linking pregnancy loss to paternal workplace exposure to ionizing radiation and paternal smoking.)

Because the risks associated with drug-dependency are not fundamentally different from other pregnancy risks, singling out stillbirths that occur to pregnant drug users for homicide prosecutions lacks rational basis and opens the door to unprecedented and counterproductive surveillance and punishment of women who seek to carry their pregnancies to term.

C. Criminally Prosecuting A Drug-Dependent Woman For Drug Use During Pregnancy Misunderstands The Nature of Addiction.

1. The Threat Of Criminal Prosecution Is Not Effective in Addressing Drug Use by Pregnant Women

There is no empirical evidence that criminal prosecution has significantly reduced the rate of drug use in the United States. See Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, SOCIAL RESEARCH (2001). For addicts, criminal prosecution has virtually no impact on use. Similarly, risk of prosecution does not dissuade pregnant women from using drugs. (Antoinette Clarke, [*Fins, Pins, Chips & Chins: A Reasoned Approach to the Problem of Drug Use During Pregnancy*](#), 29 SETON HALL L. REV. 634, 659 (1994)). Applying Oklahoma's homicide statute to women like Ms. Hernandez simply will not work to protect fetal health or deter prenatal drug use. "Enforcement of these laws does not deter addicts from using drugs during pregnancy; it is unrealistic to believe that heavier penalties will make a difference." (*Id.*)

Comprehensive treatment is a better method for addressing drug dependence than incarceration. Congress has recognized the important benefits of "encouraging all women to

abstain from alcohol consumption during pregnancy,” but has identified “educational and vocational training, appropriate therapies, counseling, medical and mental health, and other supportive services,” as the proper means of pursuing that objective. (42 U.S.C. § 280f.)

2. Addiction Presents Complex Health and Welfare Issues, Not Properly Addressed Through the Expansion of the Criminal Law.

Women, upon becoming pregnant, do not suddenly have greater access to the right kinds of health care, better housing, safer environments, or enhanced capacity to overcome behavioral health problems such as diabetes, obesity, and addiction. While numerous studies indicate that pregnant women are especially motivated to address addiction and change behavior for "the sake of the child," *See e.g.*, Murphy & Rosenbaum, *supra*, 83-99; Susan C. Boyd, *MOTHERS AND ILLICIT DRUGS: TRANSCENDING THE MYTHS* (1999), pregnancy does not create unique capacity to obtain and maintain recovery on pregnancy's timetable.

Courts and medical groups have long recognized "that addiction is not simply the product of a failure of individual willpower. Instead, dependency is the product of complex hereditary and environmental factors." American Medical Association, *Proceedings of the House of Delegates: 137th Annual Meeting*, Board of Trustees Report NNN 236, 241, 247 (June 26-30, 1988). *See also* R. K. Portenoy & R. Payne, *Acute and Chronic Pain*, in *SUBSTANCE ABUSE: A COMPREHENSIVE TEXTBOOK* 563, 582-84 (J.H. Lowinson et al. eds., 1997) (citing AMA task force); National Academy of Sciences, Institute of Medicine, *DISPELLING THE MYTHS ABOUT ADDICTION*, Ch. 8).

Although there has been extensive debate within the treatment community regarding whether addiction is a “disease,” there is no dispute that addiction has biological and genetic dimensions. *See Linder v. United States*, 268 U.S. 5, 18; 45 S.Ct. 446, 449; 69 L.Ed. 2d 819 (1925); *Robinson v. California*, 370 U.S. 660, 667; 82 S.Ct. 1417, 1420; 8 L.Ed. 2d 758

(1962); American Psychiatric Ass'n, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS - 4TH EDITION (2000) ("DSM-IV-TR"), 176-181 (specifying diagnostic criteria for "Substance Dependence"); Office of Child Abuse Prevention, State Interagency Child Abuse Prevention Task Force, *Oklahoma State Plan: For the Prevention of Child Abuse and Neglect*, 75 (2004) (hereafter "*Oklahoma State Plan*") (Oklahoma's Department of Health acknowledging the biological nature of addiction, finding that an individual's genetic predisposition to addiction was "responsible for 60% to 80% of the differences in abuse and dependence.")

As a matter of law and medical science, addiction is marked by "compulsions not capable of management without outside help." *Robinson*, 370 U.S. at 671; 82 S.Ct. at 1422; 8 L.Ed. 2d 758 (*Douglas, J., concurring*); see also 42 U.S.C. § 201(q) ("'drug dependent person' means a person who is using a controlled substance . . . and who is in a state of psychic or physical dependence, or both.") As described in the DSM-IV-TR, one of the hallmarks of drug dependency is the inability to reduce or control substance abuse despite adverse consequences. DSM-IV-TR, at 179. See also National Treasury Employees Union v. Von Raab, 489 U.S. 656, 676 (1989) ("[A]ddicts may be unable to abstain even for a limited period of time.") This is why the vast majority of drug-dependent people -- whether they are prominent radio talk show hosts, respected physicians in the community, or low-income mothers of five -- cannot simply "decide" to refrain from drug use or achieve long-term abstinence without appropriate treatment.

Criminal punishment is especially inappropriate for drug-dependent women because in many cases women turn to drug use to self-medicate the trauma of prior sexual abuse. A startling series of research findings link a high proportion of substance-abusing women to

early sexual abuse. (See CASA Report, *supra*, at 8; see also Hans, *Demographic and Psychosocial Characteristics of Substance-Abusing Pregnant Women*, 26 CLIN. PERINATOL., 55-74 (1999); Martin, *Women in a Prenatal Care/Substance Abuse Treatment Program: Links Between Domestic Violence & Mental Health*, 2 MATERNAL CHILD HEALTH J. 85-94 (1998) (reporting that 42% of substance abusing women had experienced both sexual violence and other forms of physical violence.))

3. Low Income, Vulnerable Pregnant and Parenting Women Face Numerous Obstacles to Accessing Appropriate Drug Treatment and Other Health Care

Federal, State, and Health agencies recognize the effectiveness of drug treatment. (See, e.g., U.S. Substance Abuse & Mental Health Service Admin., THE NATIONAL TREATMENT IMPROVEMENT EVALUATION STUDY (1997); National Ass'n of State Alcohol & Drug Abuse Directors, TREATMENT WORKS: A REVIEW OF 15 YEARS OF RESEARCH FINDINGS ON ALCOHOL AND OTHER DRUG ABUSE TREATMENT OUTCOMES (1990); Marwick, *Physician Leadership on National Drug Policy Finds Addiction Treatment Works*, 279 JAMA 1149 (1998); Oklahoma Department of Mental Health and Substance Abuse Services ("ODMHSAS") *The Impact of Treatment on Substance Abuse* Fact Sheet,

<http://www.odmhsas.org/News%20Stories%20PDF/09-03%20Impact%20of%20Substance%20Abuse%20Treatment%20Fact%20Sheet.pdf>).

Unfortunately, many people, particularly marginalized populations such as low income women, have difficulty obtaining treatment. As an ODMHSAS Overview notes, "[m]any barriers keep people from the treatment they need." ODMHSAS, *Overview: Access to Recovery From Alcohol and Drug Use Disorders*, ("Overview")

<http://www.odmhsas.org/New04PDF/08-20-04%20Access%20to%20Recovery%20Facts.pdf>. Among these are the "cost of treatment,"

noting that as " state budgets tighten, the money available to fund treatment programs is shrinking, making it more difficult for Americans to obtain access to local treatment programs." (*Id.*) For many Oklahomans, including the more than 600,000 who have no health insurance whatsoever, access to medical care of any kind may be beyond their reach. (http://www.captc.org/pubpol/Medicaid/Oklahoma_uninsured.pdf.) Furthermore, many women have significant care responsibilities for children and other family members, often rendering inaccessible the treatment that is available or to which they are referred or even ordered to go. *See* ODMHSAS Overview (specific barriers include "treatment systems that do not have the facilities or staff to accommodate the needs of some individuals" such as those with "childcare issues.") As a study of Oklahoma Incarcerated Women and their Children noted, in many cases the only "treatment" women received were twelve-step programs (AA/NA) or some form of substance abuse education. (<http://www.okkids.org/documents/Phase2.pdf>, at 12-14.) The shortage of appropriate drug treatment for pregnant women compounds the difficulty of ending addiction as does a climate of fear engendered by prosecutions for drug use.

Finally, while women can and do take many steps to improve pregnancy outcomes, including obtaining prenatal care and drug treatment, no woman can guarantee that she has a healthy pregnancy. Because addiction, recovery, and pregnancy itself are complex medical and public health issues, not simply matters of willpower, they should not be addressed through the expansion of the state's homicide laws.

CONCLUSION

The Oklahoma County prosecutor's effort to radically reinterpret state homicide laws to apply to the context of pregnancy should be dismissed because it lacks foundation in both

law and medicine and threatens substantial harm to maternal and fetal health throughout the State of Oklahoma.

Respectfully submitted,

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APPENDIX A

Amicus Curiae **Oklahoma State Medical Association (“OSMA”)** is part of a national network of medical associations that cooperates to represent medical doctors on local, state, and national issues. With over 4,600 physician members, OSMA is the primary professional association for individuals licensed to practice medicine in Oklahoma. Founded in 1906, the physicians of OSMA are committed to advancing the science and art of medicine for the betterment of Oklahoma physicians and the public they serve, and to fostering the highest ethical and clinical standards for the practice of medicine in the State of Oklahoma. OSMA is part of a national network of medical associations that cooperates to represent medical doctors on local, state, and national issues. The 4,600 physician members of the association.

Amicus Curiae **Oklahoma Nurses Association (“ONA”)** is the professional association for all registered nurses in Oklahoma. Founded in 1908, ONA is a community of nurses across all specialties and practice settings working to promote the profession of nursing. ONA works to address the issues that face nurses on a daily basis as well other issues of importance –standards and ethics of care, scope of practice and patient safety. ONA focuses on practice, educational, political and professional issues that impact registered nurses in Oklahoma. ONA strongly supports health care for a number of vulnerable populations and believes patients must be secure in the knowledge that their treatment providers are wholly devoted to treatment. ONA believes that the breaching of patient confidentiality and the threat of criminal prosecution deters pregnant women who suffer from chemical dependence from seeking and obtaining prenatal care.

Amicus Curiae **YWCA of Oklahoma City** is dedicated to eliminating racism and empowering women throughout Oklahoma. YWCA of Oklahoma City provides safe places for women and girls, builds strong women leaders, and advocates for women's rights and civil rights.

Amicus Curiae **Doctors of the World-USA (“DOW-USA)** was founded in 1990 by a group of volunteer physicians and is an international health and human rights organization working where health is diminished or endangered by violations of human rights and civil liberties. Reaching out to the most vulnerable and marginalized populations, in concert with local partners around the globe, Doctors of the World-USA’s projects build long-term solutions addressing urgent health issues, with particular focus on women’s health and vulnerable children.

Amicus Curiae **National Stillbirth Society** is an organization devoted to advocating on behalf of the more than 26,000 American mothers who suffer a stillbirth each year. As a misunderstood, under-discussed and under-researched medical condition, its mission is to promote greater stillbirth awareness, research and reform. The National Stillbirth Society supports this brief because it believes that contrary to popular theories, stillbirth is a random event that strikes all categories of mothers and is generally never caused by something the mother did or did not do. Although the National Stillbirth Society does not condone illicit drug use by any person at any time, it believes that the

circumstances of Ms. Hernandez's situation do not suggest a crime, but rather that her baby was one of the 15,000 stillbirths each year for which no cause can be attributed.

Amicus Curiae **American Nurses Association (“ANA”)** is a professional organization representing this nation's over 2.2 million registered nurses. ANA is committed to ensuring the availability and accessibility of health care services. It believes that access to maternal-child health services is particularly critical to efforts to prevent disease and to provide early intervention for health care problems. Thus, it opposes laws, policies and practices that erect barriers to prenatal care.

Amicus Curiae **American College of Nurse Midwives (“ACNM”)**, with roots dating back to 1929, is the oldest women's health care organization in the U.S. ACNM sets standards for the education, certification and practice of certified nurse-midwives and certified midwives, supports research, administers and promotes continuing education programs, creates liaisons with state and federal agencies and members of Congress and advocates for programs and policies that improve the health status of women and their families. The mission of ACNM is to promote the health and well-being of women and newborns within their families and communities through the development and support of the profession of midwifery practiced by certified nurse-midwives, and certified midwives. The philosophy inherent in the profession states that the midwives believe every individual to have the right to safe, satisfying health care with respect for human dignity and cultural variations.

ACNM acknowledges that addiction is medically recognized condition that affects more than 20 percent of all pregnant women per year. Addiction is the persistent compulsive use of a substance known to be physically, psychologically or socially harmful and includes addiction to substances such as tobacco, alcohol, prescription medications, and illicit drugs. In pregnancy, addiction to one or more of these substances constitutes a significant health problem. ACNM supports a health care system where women with addictions in pregnancy are treated with compassion, not punishment. This care should occur within a multidisciplinary environment that provides holistic care for pregnant women in the context of her social environment and where consideration of the health risks is paramount. Recognizing that substance use in pregnancy is a disease that requires a team approach to treatment, the American College of Nurse-Midwives supports legislation that: 1. Protects the rights of women with addictions to seek health care without fear of criminal retribution; 2. Encourages the development of public health programs to address innovative interventions to treat addictions in pregnancy; 3. Promotes education and research into this significant public health issue.

Amicus Curiae **Global Lawyers and Physicians (“GLP”)** is a non-profit non-governmental organization that focuses on health issues and human rights. Founded in 1996, GLP was formed to reinvigorate the collaboration of the legal, medical and public health professions in protecting the human rights and dignity of all persons. GLP's mission is to implement the health-related provisions of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights and Economic, Social,

and Cultural Rights, with a focus on health and human rights, patient rights, and human experimentation.

Amicus Curiae **Institute for Health and Recovery (“IHR”)** is a nonprofit organization dedicated to developing a comprehensive continuum of care for families affected by substance abuse, especially women and their children. IHR focuses on the development of prevention, intervention, treatment services and the integration of gender-specific services within substance abuse prevention and treatment. IHR serves individual women and men, and families, with a continuing emphasis on pregnant and parenting women and their children. IHR members know firsthand the fears pregnant substances abusing women have regarding prosecution, causing them to be reluctant to seek prenatal care and substance abuse treatment. With over 10 years of experience in working with pregnant women who use drugs, IHR rejects policies such as those under which Theresa Hernandez was prosecuted.

Amicus Curiae **National Association of Nurse Practitioners in Women’s Health (“NPWH”)**, formerly National Association of Nurse Practitioners in Reproductive Health, is a professional organization founded in 1980 that represents nurse practitioners who provide care to women in both the primary care setting and in women’s health specialty practices. The U.S. Department of Education recognizes NPWH as the designated organization for the accreditation of women’s health nurse practitioner programs. NPWH is committed to assuring access of quality health care to women of all ages by nurse practitioners, and to protecting a woman’s right to determine the course of her own health care. NPWH programs and publications offer special expertise in reproductive health care and nurse practitioner issues.

Amicus Curiae **National Association of Social Workers, Inc. (“NASW”)** is the world’s largest association of professional social workers with over 155,000 members in fifty-five chapters throughout the United States and abroad. Founded in 1955, NASW is devoted to promoting the quality and effectiveness of social work practice, advancing the knowledge base of the social work profession, and improving the quality of life through utilization of social work knowledge and skills. NASW believes that criminal prosecution of women who use drugs during their pregnancy is inimical to family stability and counter to the best interests of the child. The needs of society are better served by treatment of addiction, not punishment of the addict. NASW’s policy statement, *Alcohol, Tobacco, and Other Drugs*, supports “an approach to ATOD [alcohol, tobacco and other drug] problems that emphasizes prevention and treatment” and efforts to “eliminate health disparities that accrue from ATOD problems and discriminatory practices from the criminal justice system.” (NASW, *SOCIAL WORK SPEAKS*, 7th ed., 2006).

Amicus Curiae **National Association of Social Workers, Inc., Oklahoma Chapter (“NASW-OK”)** works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social practices. NASW-OK has over 1,100 members who participate in eight branches throughout Oklahoma and is primarily concerned with this case due to its local impact.

Amicus Curiae **National Council on Alcoholism and Drug Dependence (“NCADD”)**, with its nationwide network of affiliates, provides education, information, and hope in the fight against the chronic diseases of alcoholism and other drug addictions. Founded in 1944 and based in New York, NCADD historically has provided confidential assessment and referral services for alcoholics and other drug addicts seeking treatment. In 1990, the NCADD Board of Directors adopted a policy statement on “Women, Alcohol, Other Drugs and Pregnancy” recommending that “[s]tates should avoid measures which would define alcohol and other drug use during pregnancy as prenatal child abuse and should avoid prosecutions, jailing or other punitive measures which would serve to discourage women from seeking health care services.”

Amicus Curiae **American Academy of Addiction Psychiatry (“AAAP”)** is an international professional membership organization made up of practicing psychiatrists, university faculty, medical students and other related professionals founded in 1985 with approximately 1,000 members in the United States and around the world. AAAP is devoted to promoting accessibility to the highest quality treatment for all who need it by providing continuing education for addiction professionals, disseminating new information in the field of addiction psychiatry, and encouraging research on the etiology, prevention, identification, and treatment of the addictions. AAAP opposes the prosecution of Theresa Hernandez based on the belief that instead of promoting prenatal care and treatment, the threat that women’s use of illegal substances can be disclosed to law enforcement for use in criminal prosecutions will likely discourage some pregnant women from seeking prenatal care and treatment of their substance use disorder and negatively impact the confidential psychiatrist-patient relationship.

Amicus Curiae **The Association for Medical Education and Research in Substance Abuse (“AMERSA”)** was founded in 1976 by members of the Career Teachers Program, a multidisciplinary health professional faculty development program supported by the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse. AMERSA has since grown to over 300 members representing physicians of several specialties (MD and DO), nurses, social workers, psychologists, pharmacologists, dentists, and other professionals. AMERSA prides itself on its multidisciplinary and multispecialty membership, and its members benefit from the diversity of perspectives. AMERSA members have been responsible for many important advances in substance abuse education and research. AMERSA members have developed, implemented, and evaluated state-of-the-art curricula, educational programs, and faculty development programs. Our members have developed clinical and research measures for substance abuse services and professional education. They are actively engaged in research related to substance abuse education, clinical service, and prevention.

Amicus Curiae **Association of Reproductive Health Professionals (“ARHP”)** is a national non-profit, interdisciplinary medical association for leaders in the field of reproductive health. Founded in 1963 and comprised of physicians, nurse practitioners, other clinicians, pharmacists, and researchers, ARHP serves as an important source of reproductive health education and information for health care professionals, patients, legislators, other professionals, and the public at large. ARHP is concerned that the

prosecution of Theresa Hernandez threatens to undermine the quality of care provided by physicians, nurse practitioners, and other clinicians who treat pregnant and parenting women in Oklahoma by threatening the prosecution, conviction, and incarceration - rather than treatment for their substance use during pregnancy.

Amicus Curiae **Baron Edward de Rothschild Chemical Dependency Institute** ("the Institute") has over 35 years of leadership in the field of addiction treatment, first at Beth Israel Medical Center proper, then in 1988 under the name of the Chemical Dependency Institute, and now under its new name. The Institute comprises a variety of clinical programs that care for some 13,000 individuals annually; these programs are provided on an inpatient as well as ambulatory basis, and include both long-term rehabilitation as well as acute intervention. They have served as models for clinicians from around the world for over three decades.

The Institute also has an active, highly respected research staff that has published scores of seminal findings in peer-reviewed professional journals. Institute staff members are active participants in international conferences and have played a very strong advocacy role, in America and abroad, for humane policy reform and expansion as well as enhancement of treatment services. The Institute brings its expertise to this Court to explain that punitive government interventions will only deter pregnant substance abusers from obtaining prenatal care and drug treatment and undermine health outcomes for mother and child.

Amicus Curiae **The Center for Children of Incarcerated Parents ("CCIP")** was founded in 1989 to prevent intergenerational crime and incarceration. CCIP produces high quality documentation on, and the development of model services for, children of criminal offenders and their families. CCIP offers educational curricula that includes: parent education for prisoners; parent empowerment; parent education for substance-dependent parents in treatment; parent education for elementary school children; family life education; health education for incarcerated mothers; women's issues; the effects of trauma and violence on children; mentor training; and parent advocacy for prisoners. In addition, CCIP provides therapeutic services for children, children's caregivers, and teachers, as well as a range of family reunification services.

Amicus Curiae **Center for Gender and Justice ("CGJ")** seeks to develop gender-responsive policies and practices for women and girls who are under criminal justice supervision. The Center is committed to research and to the implementation of policies and programs that will encourage positive outcomes for this underserved population.

Amicus Curiae **Child Welfare Organizing Project ("CWOP")** is a 10-year-old organization of New York City parents and professionals who seek reform of New York City child welfare practices through increased, meaningful parent / client involvement in child welfare decision-making at all levels, from case-planning to policy, budgets and legislation. CWOP has approximately 1,500 parent members. Most of CWOP's staff, and about half of CWOP's Board of Directors, are parents who have had direct, personal involvement with the Administration for Children's Services ("ACS"). A significant

percentage of CWOP members are mothers in recovery. A large part of CWOP's work involves debunking prevailing stereotypes about ACS-involved parents and families, putting a human face on parents who are often unfairly and inaccurately demonized and bringing CWOP's unique insights into policy discussions. CWOP hopes this will result in more enlightened public policy that effectively identifies and addresses real problems and challenges to successful family life in New York City, ultimately protecting children by helping and strengthening their families and communities.

Amicus Curiae **Citizens for Midwifery (“CfM”)** is a national, non-profit, and consumer-based group that promotes maternal and child health through advocating the Midwives Model of Care and seeks to have these practices recognized as an accepted standard of care for childbearing mothers. In focusing on the normalcy of childbirth and the uniqueness of each childbearing woman and family, this model includes monitoring the physical, psychological, and social well-being of childbearing mothers, providing pregnant women with individualized prenatal care and hands-on assistance during labor and delivery, minimizing technological interventions, and identifying women who require obstetrical attention. As an organization, CfM also provides information on midwifery and childbirth issues, encourages and provides guidance for midwifery advocacy, and represents consumer interests regarding midwifery and maternity care.

Amicus Curiae **The Freeman Institute for Cognitive Therapy** offers specialized training in Behavioral Health Topics, Psychology, Psychiatric Nursing, Addiction Treatment and certification Preparation in Cognitive Behavior Therapy for a variety of behavioral health disorders, including personality disorders; substance misuse disorders; OCD (obsessive compulsive disorder); PTSD (stress disorders); ADHD (attention deficit hyperactivity disorder); panic disorder (and other anxiety disorders); bipolar disorder; pain management; chronic pain; eating disorders; crisis or trauma response; depression; coping skills training; counseling skill education and training; parenting help; treatment motivation; individual and group psychotherapy; therapy for children and adolescents; and relationship, couple or marriage and family problems.

Amicus Curiae **Family Justice** is an organization that draws on the unique strengths of families and neighborhoods to break cycles of involvement with the criminal justice system. It works on engaging families in support of those released under community supervision and demonstrates the positive effect that families have on the reentry and rehabilitation process. In pursuing its mission, Family Justice assists government and communities by providing direct services, testing methodologies that promote change, delivering training and consulting to encourage use of its methods, and serving as a resource for both the criminal justice field and the general public.

Amicus Curiae **National Coalition for Child Protection Reform (“NCCPR”)** is an organization of professionals, drawn from the fields of law, academia, psychology and journalism, who are dedicated to improving child welfare systems through public education and advocacy. NCCPR, a tax-exempt non-profit organization founded at a 1991 meeting at Harvard Law School, is incorporated in Massachusetts and headquartered in Alexandria, Virginia. NCCPR devotes much of its attention to public

education concerning widespread public misconceptions about the child protective system and its impact on the children it is intended to serve. Lawyer members of NCCPR also individually have litigated numerous precedential cases involving child protection policies and proceedings. NCCPR is concerned that, contrary to promoting the interests of vulnerable newborn children, a policy which calls for the arrest of those children's mothers based upon urine or blood toxicology screens, or methadone treatment causes children to suffer unnecessary psychological harm and trauma from being separated from their mothers. NCCPR is also concerned that such a separation interferes with the children's constitutionally protected liberty interest in their relationship with their mothers.

Amicus Curiae **The National Institute for Reproductive Health** (“the Institute”) is an innovation institute for state and local organizations working on reproductive health issues. The Institute offers strategic guidance, hands-on support and funding to help state and local leaders remove barriers to health care and change public policies and to help women in communities all across America gain access to the full range of reproductive health care options and the opportunity to have healthy pregnancies.

Amicus Curiae **National Latina Institute for Reproductive Health** (“NLIRH”) wants to ensure the fundamental human right to reproductive health care for Latinas, their families and their communities through education, policy advocacy, and community mobilization. Through advocacy, community mobilization, and public education, NLIRH is shaping public policy, cultivating new Latina leadership, and broadening the reproductive health and rights movement to reflect the unique needs of Latinas. NLIRH believes that coercive, discriminatory and/or punitive policies and practices (such as the criminalization of pregnant substance users) are differentially impacting Latinas and other women of color.

Amicus Curiae **National Women’s Health Network** (“NWHN”) improves the health of all women by developing and promoting a critical analysis of health issues in order to affect policy and support consumer decision-making. The Network aspires to a health care system that is guided by social justice and reflects the needs of diverse women. The National Women's Health Network was founded in 1975 to give women a greater voice within the healthcare system. NWHN is a membership-based organization supported by 8,000 individuals and organizations nationwide. NWHN has established core values to guide us in our work as advocates for women's health: (1) We value women's descriptions of their own experiences and believe that health policy should reflect the diversity of women's experiences, (2) we believe that evidence rather than profit should drive the services offered and information that is made available to women to inform their health decision making and practices, (3) we value analysis of science that takes into consideration systems of power and oppression, (4) we believe that the government has an obligation to safeguard the health of all people, (5) all women should have access to excellent health care and (6) women's normal physiological changes over the lifespan should not be unduly medicalized.

Amicus Curiae **Native American Women's Health Education Resource Center** ("the Resource Center") is the first resource center located on a reservation in the US. The Resource Center was formed in 1988 as a project of the Native American Community Board on the Yankton Sioux Reservation in South Dakota to address pertinent issues of health, education, and economic development of Native American people. The Resource Center has expanded to include many programs benefiting people locally, nationally, and internationally. Some examples are the Domestic Violence Program; AIDS Prevention Program; Youth Services, which include the Child Development Program and the Youth Wellness Program; Adult Learning Program; Environmental Awareness and Action Project; Cancer Prevention; Fetal Alcohol Syndrome Awareness Program; Clearinghouse of Educational Materials; Food Pantry; Wicozanni Wowapi Newsletter; Diabetic Nutrition Program; Scholarships for Native American Women; Reproductive Health and Rights; "Green Thumb" Project; and Community Health Fairs.

Amicus Curiae **Oklahoma Women's Network** is an online network whose purpose is to improve the status of women and girls via issue advocacy, coalition building, and information sharing; to increase the number of women in elective and appointed office in Oklahoma through recruitment, leadership training, campaign schools, and candidate recognition; to identify gender bias in Oklahoma statutes and programs through creation of a state-level women's lobby and other projects that advance the cause of women and girls; to promote collaboration and networking between women's organizations; to celebrate past Oklahoma women, recognize today's women leaders and spotlight Oklahoma's future women leaders via biographies, resumes and contact information; and to announce upcoming events of interest to Oklahoma women and recount recent events focused on the status of women in Oklahoma.

Amicus Curiae **Physicians and Lawyers for National Drug Policy ("PLNDP")** is a non-partisan group of the nation's leading physicians and attorneys, whose goal is to promote and support public policy and treatment options that are scientifically-based, evidence-driven, and cost-effective. The initiative, funded by the JEHT and Robert Wood Johnson, and building on the earlier work of Physician Leadership on National Drug Policy, is organized around the belief that effective policies for alcohol and other drugs must be grounded in data, not politics. PLNDP will advocate for evidence-based policy decisions and will encourage local innovation by establishing stable professional partnerships in every state and by supporting community coalitions. For the first time, physicians and lawyers, often viewed as squaring off in policy debates, have joined forces to make a concerted effort to move the national conversation beyond the often misleading and polarizing policy debates of the past.

Amicus Curiae **Planned Parenthood of Central Oklahoma ("PPCO")** provides women, men and families of central Oklahoma the best possible reproductive health care services. PPCO's mission is to provide comprehensive reproductive and complementary health care services in settings which preserve and protect the essential privacy and rights of each individual; to advocate for public policies which guarantee these rights and ensure access to such services; to provide educational programs which enhance

understanding of individual and societal implications of human sexuality; to promote research and the advancement of technology in reproductive health care; and to encourage understanding of their inherent bioethical, behavioral, and social implications. More than 8,400 men and women depend on Planned Parenthood of Central Oklahoma annually for high-quality, low-cost reproductive health services, and an additional 8,325 men, women, and teenagers participate in 112 educational programs and professional workshops conducted by PPCO. Founded in 1937, PPCO is one of 122 affiliates nationwide of the Planned Parenthood Federation of America®, which together provide family planning, reproductive health care and other services to over 2.3 million Americans.

Amicus Curiae **Eli Reshef, M.D.**, practices Obstetrics and Gynecology and is a specialist in Reproductive Endocrinology and Fertility and a Clinical Associate Professor in the Department of Obstetrics and Gynecology at University of Oklahoma Health Sciences Center.

Amicus Curiae **Dana Stone, M.D.**, practices Obstetrics & Gynecology in Oklahoma City, Oklahoma. Dr. Dana Stone graduated from the University of Oklahoma College of Medicine and has been in the profession for 16 years.

Amicus Curiae **Jeffrey Blustein, PhD** is Professor of Bioethics and Family and Social Medicine, Albert Einstein College of Medicine, and adjunct Associate Professor of Philosophy, Barnard College. His main areas of scholarly work include bioethics, normative ethics, and moral psychology.

Amicus Curiae **Susan C. Boyd, PhD**, is Associate Professor in the Studies in Policy and Practice Program at University of Victoria, and a Senior Research Fellow in the Centre for Addictions Research of British Columbia. Her research is on gender and maternal drug use, women in conflict with the law, drug law and policy, and research methodology. Professor Boyd is author of *Mothers and Illicit Drugs: Transcending the Myths, From Witches to Crack Moms: Women, Drug Law, and Policy*, and co-author of *With Child, Substance Use During Pregnancy: a Woman-Centered Approach*.

Amicus Curiae **Deborah Coady, M.D.**, practices Obstetrics & Gynecology clinically at Soho Obstetrics & Gynecology PC in New York. Dr. Coady received her medical degree from the Mt Sinai School of Medicine of The City University of New York and has been in the profession for 27 years.

Amicus Curiae **Nancy Day, M.P.H.** is Professor of Psychiatry and Epidemiology. She has studied the effects of prenatal exposures to alcohol, marijuana, cocaine, and tobacco for over 20 years. She has published prolifically and has received grants from the NIH in support of her work. She is currently the Director of the Maternal Health Practices and Child Development Project centered on identifying long-term effects of prenatal substance abuse.

Amicus Curiae **Nancy D. Campbell** is the author of *Using Women: Gender, Drug Policy, and Social Justice* (Routledge 2000), a history of how pregnant women are used to call for drug policies that are unjustifiably harsh and ill considered in terms of their social consequences.

Amicus Curiae **Katherine Irwin, PhD**, is a professor at the University of Hawaii at Manoa, teaching courses in: Survey of Criminology, Introduction to Juvenile Delinquency, Survey of Drugs and Society, Analysis in Field Research Methods, Analysis in Criminology/Juvenile Delinquency, Methods of Research in Criminal Justice, Seminar in Criminology. Dr. Irwin's research areas include juvenile delinquency, deviance, drug use, violence, youth culture, adolescent development, gender and crime, research methods, and delinquency prevention.

Amicus Curiae **Stephen Kandall, M.D.** is a pediatrician who has cared for over a thousand babies exposed to drugs. He is also chief of neonatology at Beth Israel Medical Center in New York and has written a book (*Substance and Shadow: Women and Addiction in the United States* Cambridge: Harvard University Press, 1996.) outlining the horrors of prosecuting women who need drug treatment.

Amicus Curiae **F. David Schneider, M.D., M.S.P.H.** is a family physician and an Associate Professor of Family and Community Medicine at the University of Texas Health Science Center and is a recognized expert on issues of health care and domestic violence. Dr. Schneider is the president of the newly established Academy on Violence and Abuse, a member of the AMA Advisory Council on Violence and Abuse, and the Chair of the American Academy of Family Physicians Commission on Public Health.

Amicus Curiae **Linda Worley, M.D.** is an Associate Professor in the College of Medicine at the University of Arkansas for Medical Sciences (UAMS) and directs the campus wide Student Mental Health Service. Dr. Worley is a board certified Psychiatrist with sub-specialization in Addiction Psychiatry. Dr. Worley was recruited to join the UAMS, Department of Psychiatry Faculty in 1992 and was promoted with tenure in 1998 in the clinician educator track. She has strong interests in psychosomatic medicine and in the well-being of health care providers.

Amicus Curiae **Ernest Drucker, PhD**, is a Professor of Epidemiology and Social Medicine and a Professor of Psychiatry at Montefiore Medical Center/Albert Einstein College of Medicine in New York City. His research examines AIDS, drug use, and drug policy in the US and abroad. He is a licensed Clinical Psychologist in New York State and active in drug law reform and human rights. Dr. Drucker was founding Director of a 1000 patient drug treatment program in the Bronx, and has been an NIH funded researcher of AIDS and drug addiction for 15 years. He is author of over 100 scientific articles and book chapters and is Editor in Chief of the international journals *Addiction Research and Theory* and the new on-line *Harm Reduction Journal.com*. Dr. Drucker was a founder of the International Harm Reduction Association and Chairman of Doctors of the World / USA (1993- 1997). Dr. Drucker currently serves as a senior Soros Justice Fellow.

Amicus Curiae **Fonda Davis Eyler, Ph.D.** is a Professor in the Department of Pediatrics of the University of Florida College of Medicine and is also a licensed Developmental Psychologist. Dr. Eyler is Developmental Director of Early Steps, an early intervention program for children from birth to three years of age, who live in the surrounding sixteen counties and have developmental delays and disabilities. She is a Principle Investigator on a prospective, longitudinal research study that has been following a cohort of the children born to women who used cocaine during their pregnancy and a matched comparison group of pregnant women who were not addicted to cocaine and their children. Dr. Eyler brings a wealth of knowledge concerning the impact on children of drug abuse during pregnancy.

Amicus Curiae **Dr. Sharon Morgillo Freeman, PhD, MSN, APRN-CS, ACT,** is the Director of The Center for Brief Therapy in Fort Wayne, Indiana and Vice-President of the Freeman Institute for Cognitive Therapy. She is Past-President of the National Association of Addiction Professionals (NAADAC), Member of the Board of Directors of The International Association of Cognitive Psychotherapy, Member of the Board of Directors of The Alcohol Abuse Deterrent Programs and Past-President of the Pennsylvania Association for Addiction Professionals (PAADAC). Dr. Sharon Freeman is board certified by the Academy of Cognitive Therapy in addition to certification as an Advanced Practice Psychiatric Clinical Nurse Specialist, and senior level certification as an addiction professional (MAC) through NAADAC. She has a Ph.D in Sociology and her two master's degrees were awarded in Psychology through the Adler School of Professional Psychology and Advanced Practice Psychiatric nursing at the University of Pennsylvania.

Amicus Curiae **Howard Minkoff, M.D.,** is the Chair of the Department of Obstetrics and Gynecology at Maimonides Medical Center, and a distinguished Professor of Obstetrics and Gynecology at the State University of New York Health Science Center at Brooklyn. He is a member of the Ethics Committee of the American College of Obstetricians and Gynecologists and he sits on the editorial board or is an editorial consultant to almost all of the most prominent medical journal, including JAMA, New England Journal of Medicine, Lancet, and hundreds of articles, and is internationally recognized expert on HIV disease and high risk pregnancy. Professor Minkoff has conducted years of grand scale research, supported by millions of dollars of grants, concerning the reproductive behaviors of low-income women, many with drug abuse problems. Through his work with these women, he has developed widely adopted treatment protocols and ethical guidelines. Professor Minkoff brings his wealth of knowledge to this Court to ensure that it understands that punitive measures, including criminal prosecutions, of pregnant women with drug abuse problems will harm both maternal and child health.

Amicus Curiae **Barbara T. O'Brien, RN, BSN,** is Senior Coordinator of the Office of Continuing Perinatal Education at the University of Oklahoma Health Sciences Center, where she coordinates and instructs extended coursework for registered nurses

around fetal and perinatal health, including fetal monitoring regarding alcohol and other drug use.

Amicus Curiae **Robert G. Newman, M.D.**, is President Emeritus of Continuum Health Partners, Inc, comprising four hospitals and with the largest chemical dependency treatment services of any health care system in the United States. He is a Professor of Epidemiology and Population Health and Professor of Psychiatry at the Albert Einstein College of Medicine, and a former member of the Board of Commissioners of the Joint Commission of Accreditation of Health Care Organizations. Dr. Newman has very extensive experience with addiction treatment over the course of more than three decades and has played a major role in the development of addiction treatment in the U.S., Australia, Asia and Europe.

Amicus Curiae **Morton Skorodin, M.D.**, is a retired practitioner of Internal Medicine from Oklahoma with long experience in women's and family health.

Amicus Curiae **Judith Harris, RN, EdD, ARNP**, has focused her clinical nursing career on caring for women during the childbearing experience. She has worked with mothers in the prenatal period and during their hospitalization for childbirth. She is certified in health care for women. She also has many years of experience as an educator.