IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

No. 45 WAP 2019
In the Interest of: D.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 46 WAP 2019
In the Interest of: A.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 47 WAP 2019
In the Interest of: G.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 48 WAP 2019
In the Interest of: R.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 49 WAP 2019
In the Interest of: C.R., a minor,
Appeal of: Fayette County Children and Youth Services.

BRIEF OF AMICI CURIAE NATIONAL ADVOCATES FOR PREGNANT WOMEN, COMMUNITY LEGAL SERVICES OF PHILADELPHIA, AND EXPERTS IN CHILD WELFARE, PUBLIC POLICY, AND LAW IN SUPPORT OF APPELLEES

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STATEMENT OF INTEREST OF AMICI CURIAE

National Advocates for Pregnant Women and Community Legal Services of Philadelphia file this brief on behalf of amici curiae, who collectively represent experts in the fields of child welfare, public policy and law, and are committed to the civil and human rights of parents and families (collectively "amici").[1] *Amici* fully incorporate the legal and constitutional arguments made by Appellee Father in this case, and write separately in an effort to assist the Court by bringing to bear relevant information which militates against the judicial expansion of Pennsylvania law to permit pre-adjudication compelled drug tests. Specifically, *amici* wish to inform the Court on the wider implications of this case; we are concerned that allowing this unsupported expansion will advance unsound public policy and undermine constitutional rights as well as the health and safety of parents and their children.

No one other than *amici* or its counsel paid for the preparation of this brief or authored it, in whole or in part.

STATEMENT OF JURISDICTION

Amici incorporate the Statement of Jurisdiction in Appellee's Brief.

ORDER OR OTHER DETERMINATION IN QUESTION

Amici incorporate the statement of the Order or Other Determination in Question in Appellee's Brief.

[1] Further information about each amici is included as Appendix A.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Amici incorporate the Statement of the Scope and Standard of Review in Appellee's Brief.

STATEMENT OF THE CASE

Amici incorporate the Statement of the Case in Appellee's Brief.

SUMMARY OF ARGUMENT

The Superior Court did not err on this issue of substantial public importance when it held the Child Protective Services Law (CPSL) and its implementing code do not permit compelled drug testing of parents during civil child welfare investigations. *Amici* support Appellee Father's arguments regarding the plain language and limitations of Child Protective Services Law (CPSL), 23 Pa.C.S.A. §§ 6301 et seq. and its corresponding regulations. See Pennsylvania v. Rushing, 99 A.3d 416, 423 (Pa. 2014) ("To determine the legislature's intent . . . we necessarily turn to the Statutory Construction Act" and the "best indication of the legislature's intent is the plain language of the statute . . . Further, when the words of a statute are clear and unambiguous, there is no need to go beyond the plain meaning of the language of the statute under the pretext of pursuing its spirit") (internal citations and quotations omitted). As the Superior Court of Pennsylvania held:

> [A] urine analysis would undoubtedly constitute a search, where constitutional safeguards would necessarily attach, [however] we conclude that there is no statutory authority for a CYS agency to petition for a drug test prior to a dependency adjudication. Unlike a home inspection, a drug screen is not mentioned, much less mandated, anywhere in either the CPSL, or Title 55 of the Pa. Code.

In the Interest of D.R., 216 A.3d 286, 295 (Pa Super. Ct. July 26, 2019).

Such an expansion of the law would not serve any state or public interest, as urine drug screen results are often inaccurate or inconclusive, and alone cannot establish whether a person is a fit parent. Further, the proposed expansion of the law will undoubtedly increase the potential for drug testing orders to be disproportionately issued against poorer people and people of color.

Significantly, if this Court permits such an expansion, it will then have to address the constitutionality of that interpretation of the law, specifically including the federally and state protected right against unreasonable searches and seizures. See Pennsylvania v. Omar, 981 A.2d 179, 192 (Pa. 2009) ("It is a basic tenet of statutory construction that, when evaluating the constitutionality of a statute, a court must presume that the General Assembly did not intend to violate the Constitution of the United States or of Pennsylvania when it promulgated the statute . . . then, this Court should, whenever possible, construe a statute to uphold its constitutionality.") See also U.S. Const. Amend. IV; Pa. Const. Art. 1, §8.

As such, and in accordance with Pennsylvania law, this Court must affirm the holding of the Superior Court.

ARGUMENT

I. No existing statutory or regulatory authority requires or permits the compulsory urine drug screens during an investigation of a report of suspected child abuse or neglect.

The Child Protective Services Law (CPSL), 23 Pa.C.S. §§ 6301 *et seq.*, charges county children and youth agencies with the responsibility to investigate every report of suspected child abuse and/or neglect. Nothing in the CPSL allows for compelled drug testing during an investigation. After receiving a report, the investigations are initiated and conducted pursuant to

the provisions of the CPSL and its accompanying regulations. Children and Youth Services (CYS) must take certain enumerated actions in the course of every investigation. For example, the agency is required to interview the child, the parents and/or primary caregivers, and any other person who may reasonably be expected to have information that would be helpful. 55 Pa.A.D.C. § 3490.55(d); 55 Pa.A.D.C. § 3490.232(g). The agency also is required to visit the child's home at least once during the course of an investigation, and is permitted to make unannounced home visits. 55 Pa.A.D.C. § 3490.55(i); 55 Pa.A.D.C. §§ 3490.232(f), (h).

Although there have been numerous expansions and revisions to the CPSL in the wake of the Sandusky scandal, the legislature has *not* created any authority requiring or permitting a county children and youth agency to compel a parent to submit to urine drug screening during an investigation of suspected child abuse and/or neglect. As the Superior Court correctly concluded:

> The General Assembly has legislated extensively in the area of child abuse and neglect. In our role as an error-correcting court, we decline to derive from another area of the law the government's authority to drug test parents, prior to a dependency adjudication, when no explicit provision authorizing the same exists in either the CPSL or corresponding regulations.

Interest of D.R., 216 A.3d 286, 296 (Pa. Super. 2019).

Because the legislature has had the opportunity to create a provision authorizing the administration of compulsory urine drug screens during an investigation and has declined to do so, the relief appellant seeks here amounts to an improper judicial expansion of the CPSL beyond the boundaries of the legislature's intent.[2]

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[2] While *Amici* here focus on the Fourth Amendment implications of appellant's proposed judicial expansion of the CPSL, it is important to note that expansion of the CPSL also raises significant due process concerns. Parents who are subjected to CYS investigations are entitled to notice of the permissible parameters of that investigation, as outlined in the current law. The judicial expansion of the CPSL sought by appellant unlawfully deprives parents of this basic right.

II. The proposed judicial expansion of the CPSL to permit unreasonable searches of parents is unsound and unsupported policy.

The proposed expansion of the law would not only run afoul to the constitutional protections afforded to parents by the U.S. and Pennsylvania constitutions, as discussed in Section III, it is not supported by science or public policy and would be harmful to children and families.

A. *Evidence does not support the idea that a positive toxicology alone is evidence of an inability to parent.*

Every state across the country has civil statutes addressing child maltreatment, yet there is no research that establishes a causal link between a person who has used some amount of controlled substances and the likelihood to harm a child.

> As research has repeatedly shown, a woman who uses drugs . . . while parenting is not ipso facto an incompetent mother. For example, one study at the University of Florida compared cocaine-exposed babies who were put in foster care with those who were left with their birth mothers. The infants who stayed with their natural mothers showed better neurological and physical development than those in foster care. As one commentator put it, separation from their mothers was more toxic than the cocaine to the foster care children.

Ian Vandewalker, Taking the baby before its born: Termination of the parental rights of women who use illegal drugs while pregnant, 32 N.Y.U. Rev. L. & Soc. Change 423, 439 (2008) citing Susan C. Boyd, Mothers and Illicit Drugs: Transcending the Myths 14-16 (1999) (reviewing fourteen studies demonstrating that women who use illegal drugs can be fit parents). See also Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act*, 1 Nw. J. L. & Soc. Pol'y 303, 321 (2006).

In-fact, a systemic review of studies on drug testing and child welfare critiqued "the use of drug tests to assess anything other than point-in-time substance use" as they do not measure "any of the three priorities of the child welfare system (safety, well-being, or permanence)." Jody Brook & Margaret Lloyd, Drug testing in child welfare: A systemic review, 104 Children and Youth Services Review 7 (2019). In 1992, the U.S. Department of Justice explained: a "positive test result, even when confirmed, only indicates that a particular substance is present in the test subject's body tissue. It does not indicate abuse or addiction; recency, frequency, or amount of use; or impairment." Bureau of Justice Statistics, U.S. Dept. of Justice, Drugs, crime, and the justice system: A national report from the Bureau of Justice Statistics 119 (1992). Furthermore, jurisdictions where substance exposed newborns are considered civilly abused or neglected have actually failed to decrease substance use and instead have discouraged treatment. J. Cantor et al., Association of Punitive Reporting State Policies Related to Substance Use in Pregnancy With Rates of Neonatal Abstinence Syndrome, 2 JAMA Network Open 1 (2019).

Permitting courts to order drug testing of parents "prior to a dependency adjudication, when no explicit provision authorizing the same exists in either the CPSL or corresponding regulations" is a grave violation of parents' federally and state protected rights. In re D.R. 216 A.3d at 296; Section III infra. Further, Appellant supports such an intrusion without any evidence that it would yield unique or critical information about parents or their judgment relevant to the child protection process.[3] Viewing parents who use any amount of drugs as a

[3] Interestingly, on similar grounds Georgia defended a statute requiring drug testing for public office candidates by arguing "use of illegal drugs draws into question an official's judgment and integrity." The United States Supreme Court held this requirement was unconstitutional: "Our precedents establish that the proffered special need for drug testing must be substantial—important enough to override the individual's acknowledged privacy interest . . . Georgia has

danger to their children has led to terrible, costly and medically unjustified interventions that can separate families. See Kathryn Dee L. MacMillan et al., Association of Rooming-in With Outcomes for Neonatal Abstinence Syndrome: A Systematic Review and Meta-analysis, 172 JAMA Pediatrics 345 (2018); see also Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Am. Econ. Rev. 1583 (2007); Douglas F. Goldsmith et al., Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placement of Children in Foster Care, 55 Juv. & Fam. Ct. J. 1 (2004).

B. *Urine drug screen results are not dependable and should not be relied upon as damning evidence against parents.*

In addition to the County's proposed expansion of the law violating parents' federally and state protected constitutional rights, infra Section III, it is particularly troubling that such government intrusions may be based on faulty and inaccurate mechanisms. Just in the last few months, the New York Times has published findings from its investigation of alcohol breathalyzer machines titled, These Machines Can Put You in Jail. Don't Trust Them, and reported on the use of inaccurate test results against prisoners in After False Drug Test, He was in Solitary Confinement for 120 Days.[4]

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failed to show, in justification of [its statute] a special need of that kind." Chandler v. Miller, 117 S.Ct. 1295, 1303 (1997). See also Lebron v. Secretary of the Florida Dept. of Children and Family Services, 772 F.3d 1352 (11th Cir. 2014) (Striking down requirement for all public benefits applicants to consent to be drug tested).

[4] Stacy Cowley, These Machines Can Put You in Jail. Don't Trust Them, N.Y. Times, Nov. 3, 2019,https://www.nytimes.com/2019/11/03/business/drunk-driving-

Drug and alcohol testing mechanisms are not uniform, nor are they consistently reliable or accurate. One form of testing is clinical drug testing, most often performed on urine samples and the most prevalent form of screening (known as "urine drug screening" or "UDS"). Moeller et al., Urine Drug Screening: Practical Guide for Clinicians, 45 Mayo Clinic Proceedings 66, 66 (2008). It is also the form of drug testing that was ordered on the Appellee in the instant matter. A UDS is qualitative, meaning it establishes a *presumption* that a chemical compound is present in the bodily fluid, but it does not definitively prove it. Substance Abuse and Mental Health Services Administration, U.S. Dept. of Health and Human Services, Clinical Drug Testing in Primary Care (2012), https://store.samhsa.gov/system/files/sma12-4668.pdf. To determine whether a positive clinical result is accurate, a forensic test must be performed to confirm the result. Moeller et al., supra at 74 ("A confirmatory test (e.g. GC-MS) is required before decisions can be made on the basis of UDSs" and "[t]he main disadvantage of immunoassays is obtaining false-positive results when detection of a drug in the same class requires a second test for confirmation.") As far back as the 1970's, the National Bureau of Standards said clinical drug tests "should not be used as the sole evidence for the identification of a narcotic or drug of abuse." Ryan Gabrielson & Topher Sanders, Busted, Propublica, July 7, 2016.

Clinical drug tests can be inaccurate and imprecise. "[I]nvestigators have reported false-negative rates for urine screening of 30% and higher." Arthur L. Kellermann et al., Utilization

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breathalyzer.html?smid=nytcore-ios-share; Jan Ransom, After False Drug Test, he Was in Solitary Confinement for 120 Days, Nov. 20, 2019, https://www.nytimes.com/2019/11/20/nyregion/prison-inmate-drug-testing-lawsuit.html. See also Schulte et al., Liquid Gold: Pain Doctors Soak Up Profits by Screening Urine for Drugs, Kaiser Health News (Nov. 6, 2017).

and Yield of Drug Screening in the Emergency Department, 6 Am. J. of Emergency Med. 14, 19 (1987). See also Hugh J. Hansen et al., Crisis in Drug Testing: Results of CDC Blind Study, 253 J. Am. Med. Ass'n. 2382 (1985). Misleading and faulty results, also known as false positives, regularly occur in two situations: when the chemical compound is not present at all (in other words the result is simply wrong), or when the chemical compound is present but comes from a lawful source, like medication, but the test result does not make that distinction. Robert L. DuPont et al., Drug Testing: A White Paper of the American Society of Addiction Medicine 1, 6 (Oct. 26, 2013); Brahm, et al., Commonly Prescribed Medications and Potential False-Positive Urine Drug Screens, 67 Am. J. Health-Sys Pharm 1344, 1349 (Aug. 15, 2010) ("A number of routinely prescribed medications have been associated with triggering false-positive UDS results.") For example, Venlafaxine, an anti-depressant, can lead to a positive result for PCP. Moeller et al., supra at 72-73. Consequently, UDS test results can be defective and should not be treated as concrete proof that one has used a particular substance.

Additionally, numerous instances demonstrate the risks of contamination in laboratories as well as the devastating consequences for those impacted by erroneous results. Mass. Lab Mishandling May Mean 1,140 Inmates Convicted Using Tainted Evidence, Report Says, CBS Boston, Sept. 25, 2012, https://www.cbsnews.com/news/mass-lab-mishandling-may-mean-1140-inmates-convicted-using-tainted-evidence-report-says/; Justin Zaremba, Lab Tech Allegedly Faked Result in Drug Case; 7,827 Criminal Cases Now in Question, NewJersey.com Mar. 2, 2016. For example, in 2015, an independent review of the Motherisk Laboratory at the Hospital for Sick Children in Toronto that had drug tested more than 24,000 hair samples for child welfare cases, determined the results were "inadequate and unreliable." Tragically, they had

already been used in criminal and civil child welfare proceedings as evidence against parents and were used to separate families. Susan E. Lang, Report of the Motherisk Hair Analysis Independent Review (Dec. 15, 2015), https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lang/; The Honourable Judith C. Beaman, Commissioner, Harmful Impacts: The Reliance on Hair Testing in Child Protection Report of the Motherisk Commission (Feb 2018).

Importantly, the proposed expansion of the law could permit such inaccurate test results to be used in a process that triggers grave legal consequences for families, including the removal of children and the filing of cases in court. Infra Section III. B; see also Jody Brook & Margaret Lloyd, Drug testing in child welfare: A systemic review, 104 Children and Youth Services Review 8 (2019) ("34% of foster cases in 2017 indicated parental drug use as a reason for removal" even though experts found that single positive test "only documents a very recent exposure to the drug" but "does not indicate the level of social, familial, or psychological dysfunction experienced as a result of drug use.") Valerie L'Herrou, Aging Out: 2018 Legislation Seeking to Address Virginia's Permanency Problem for Children in Foster Care, 22 Rich. Pub. Int. L. Rev. 49, 57-59 (2019) ("Breaking the primary attachment bond is harmful to children and should only be done as a last resort, when it is clear a parent cannot become fit.") The resulting trauma should only be considered when absolutely necessary to ensure the safety of children, not as a result of faulty testing, assumptions and misinformation.

III. Judicial expansion of the CPSL to allow the administration of compulsory urine drug screens during a CYS investigation would violate the Fourth Amendment to the United States Constitution, and Section I, Article 8 of the Pennsylvania Constitution.

A. *CYS investigations are subject to the limitations of the Fourth Amendment to the United States Constitution, and Article I, Section 8 of the Pennsylvania Constitution.*

It is well settled that CYS investigations are subject to the federal and state constitutional protections against unreasonable searches and seizures. In re Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365, 374 (Pa. Super. 2005) ("We…hold that the Fourth Amendment and Article I, Section 8 apply to the CPSL and the regulations written to implement it.") Thus, CYS's obligation to take specific actions during the course of every investigation "do[es] not trump an individual's constitutional rights under the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution." Id. at 379. The agency's obligations under the CPSL and the accompanying regulations "must be construed in such manner, if possible, as to bring it in harmony with constitutional requirement[s]." Com. v. McCoy, 172 A.2d 795, 798 (Pa. 1961).

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy. Upon closing the door of one's home to

the outside world, a person may legitimately expect the highest degree of privacy known to our society." Com. v. Flewellen, 380 A.2d 1217, 1219-20 (Pa. 1977).

Similarly, Article I, Section 8 of the Pennsylvania Constitution provides:

> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const Art. I, § 8. In many circumstances, the protection against unreasonable searches and seizures afforded by the Pennsylvania Constitution is even broader than that which is afforded under the federal Constitution, because it is "grounded in the protection of privacy..." rather than deterring police misconduct. Metz v. Bethlehem Area School District, 177 A.3d 384, 392 (Pa. Cmwlth. Ct. 2018); Com. v. Jackson, 698 A.2d 571, 573 (Pa. 1997), citing Com. v. Edmunds, 586 A.2d 887 (Pa. 1991).

State intrusion into the sanctity of family life and the family home implicates one of the oldest and most well-recognized privacy interests that exists in our nation. Thus, families are entitled to invoke the constitutional protections against unreasonable searches and seizures enumerated in the Fourth Amendment to the United States Constitution, and Article I, Section 8 of the Pennsylvania Constitution in the course of a CYS investigation.

B. ***Even if statutory or regulatory authority did exist, compulsory urine drug screening in the context of a CYS investigation constitutes an unreasonable search and seizure if not supported by probable cause.***

State-compelled collection and testing of urine constitutes a "search" for purposes of the Fourth Amendment to the federal constitution and Article I, Section 8 of the Pennsylvania Constitution. Skinner v. Railway Labor Executives' Association, 489 U.S. 602, 616-17 (1989);

Metz, 177 A.3d 384 (Pa. Cmwlth. Ct. 2018). Although the collection of urine does not include any intrusion into the body, it nevertheless constitutes a search, as it "intrudes upon expectations of privacy as to medical information and the act of urination that society has long recognized as reasonable." Skinner, 489 U.S. at 603. Thus, compulsory urine drug screening cannot survive constitutional scrutiny unless it is found to be "reasonable" in the context within which it is sought to be used.

"Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing... reasonableness generally requires the obtaining of a judicial warrant" based upon a showing of probable cause. Id. at 619. Similarly, a "reasonable" search in the context of a CYS investigation requires "a verified petition alleging facts amounting to probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will be found...." in the course of the search. Petition to Compel, 875 A.2d at 377.

The mirroring of the probable-cause requirement in the criminal and CYS investigation contexts recognizes a fundamental truth – a CYS investigation of a report of suspected child abuse and/or neglect is akin to a search for the purpose of law enforcement. See Petition to Compel, 875 A.2d at 376-77, n.5 ("courts have recognized the quasi-criminal nature of child abuse investigations by county agencies; and depending on the outcome of the investigation, it could lead to the filing of criminal charges.")

Any parent can be unknowingly thrust into the crosshairs of a quasi-criminal CYS investigation by virtue of oftentimes nothing more than an anonymous report, and the array of possible consequences resulting from a CYS investigation can be severe. Criminal charges may be filed as a result of an investigation. There are also other possible punitive outcomes when a

child abuse report is "indicated," mainly the parent may "indefinitely" remain on the statewide registry. 23 Pa.C.S. §§ 6303, 6338(c).[5] An "indicated" report of child abuse forecloses individuals from many jobs that could offer stability and meaningful paths out of poverty – such as childcare, health care, or elder care. Even if an investigation does not culminate in criminal charges or an indicated report of child abuse, it could lead to the implementation of compulsory in-home supervision of one's family or the removal of an individual's children.

In the context of a CYS investigation, the probable-cause requirement serves a critical purpose. Because of the significance of the privacy interests at stake, and the severity of the possible consequences of a CYS investigation, a "reasonable" search and seizure must be based upon probable cause to survive constitutional scrutiny.

C. *There exists no "special need" that would render the probable-cause requirement impractical in the context of a CYS investigation.*

Compelled drug testing during a CYS investigation must be supported by a showing of probable cause. However, under the Fourth Amendment, not every governmental search and seizure must be so supported to survive constitutional scrutiny. See Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995); New Jersey v. T.L.O., 469 U.S. 325 (1985). A search unsupported

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[5] An alleged perpetrator may request a hearing to review the accuracy of the finding, if she does so within 90 days. 23 Pa.C.S. § 6341(a). The CPSL also permits the Secretary of the Pennsylvania Department of Human Services to review a finding of child abuse, and the Secretary may expunge an indicated report for "good cause," which may include evidence that the perpetrator in an indicated report of abuse "no longer represents a risk of child abuse." Id. Such relief lies solely in the discretion of the Secretary, and may not be granted until years or even decades after the initial finding. In practice, the consequences of most indicated reports may last a lifetime. The CPSL also allows for expungement in other very limited circumstances. See 23 Pa. C.S. §6338(b), (c), 23 Pa. C.S. §6338.1.

by probable cause may be upheld as reasonable "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." Griffin v. Wisconsin, 483 U.S. 868, 873, 875 (1987) (upholding the warrantless search of a probationer's home because the supervision of probationers "is a 'special need' of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large."). See also Bell v. Wolfish, 441 U.S. 520 (1979) (upholding body cavity searches of prison inmates in the absence of probable cause due to "special need" to maintain institutional security and preserve internal order and discipline); Skinner, 489 U.S. at 633–34 (upholding compulsory blood and urine drug screening of railway employees involved in train accidents due to employers' "paramount interest in ensuring that employees are free from the effects of drugs while performing their duties" and employees' "lower expectation of privacy" due to their "participation in an industry that is regulated pervasively to ensure… the health and fitness of covered employees").[6]

In contrast to probationers, prisoners, and government employees in safety-sensitive jobs, parents who become the subjects of CYS investigations have a reasonable expectation of "the highest degree of privacy known to our society." Flewellen, 380 A.2d at 1219-20. Because of this well-established expectation of privacy, and because CYS's interest in completing its investigation is not jeopardized by the existing requirement[7] to petition the court to compel a

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[6] See also Ferguson v. City of Charleston et al., 532 U.S. 67 (2001) (deterrence of prenatal drug use to protect the health of mother and child is not a "special need" sufficient to justify hospital policy allowing the warrantless drug testing of pregnant patients and provision of test results to law enforcement).

[7] See Pa.A.D.C. § 3490.73(2) ("The county agency shall petition the court if… a subject of the report of suspected child abuse refuses to cooperate with the county agency in an investigation, and the county agency is unable to determine whether the child is at risk."); Pa.A.D.C. §

parent's cooperation if need be, there exists no "special need" that renders the probable-cause requirement impractical in the context of a CYS investigation.

i. Appellant erroneously relies on Luminella v. Marcocci, as it is inapposite.

There is no "special need" for the compelled drug testing of parents during child welfare investigations. Contrastingly, Luminella v. Marcocci, 814 A.2d 711 (Pa. Super. 2002), addressed a child custody matter in which a mother was ordered by the court to submit to random urine drug testing pursuant to Pa.R.C.P. 1915.8, which allows the court to compel any party in a child custody action to submit to physical and/or mental examination upon the court's motion, the motion of any party, or by agreement of the parties. 814 A.2d at 720. Employing the Vernonia[8] test, the court ordered the drug testing. However, for a number of reasons, this case is inapposite.

First, in contrast to Luminella and as discussed in Section I supra, there is no statutory or regulatory authority permitting a county children and youth agency to compel an individual to submit to urine drug screening during an investigation of suspected child abuse and/or neglect. Even in contexts where an established "special need" exists, warrantless administrative searches not conducted pursuant to a specific statutory or regulatory authority have been held to be

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3490.232(j) ("The county agency shall initiate the appropriate court proceedings and assist the court during all stages of the court proceedings if the county agency determines that general protective services are in the best interest of a child and if an offer of an assessment, a home visit or services is refused by the parent.").

[8] In circumstances where a "special need" would render the warrant and probable-cause requirements impractical, the "reasonableness" of a search is determined by weighing (1) the nature of the privacy interest at stake, (2) the character of the intrusion, and (3) the nature and immediacy of the governmental concern at issue, and the efficacy of the suggested means for meeting it. Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 653-61 (1995).

unlawful. See Com. v. Petroll, 738 A.2d 993 (Pa. 1999) (holding that a post-accident warrantless search of commercial tractor-trailer and seizure of the driver's logbook was outside the scope of searches authorized by the Motor Vehicle Code, and was thus unlawful); Com. v. Black, 530 A.2d 423 (Pa. Super. 1987) (holding that the warrantless search of private club licensed by the Pennsylvania Liquor Control Board was not authorized by the Liquor Code, and thus violated the club owner's Fourth Amendment right against unreasonable search and seizure).

Further, while appellant concedes that Pa.R.C.P. 1915.8 is inapplicable to CYS investigations, appellant suggests that its reasoning is instructive. However, as the Superior Court correctly observed here, "a contested custody action between parents (or statutorily authorized family members) does not involve the same type of governmental intrusion as a CYS Agency's investigation of child abuse or neglect, either in degree or in kind." D.R., 216 A.3d at 296.

Second, Luminella was decided before In re Petition to Compel Cooperation, supra, which conclusively held that the federal and state constitutional protections against unreasonable searches and seizures apply to CYS investigations, and that "reasonable" searches must be supported by a verified petition amounting to probable cause that an act of child abuse or neglect has occurred and belief that evidence of such an act will be found during the search. 875 A.2d at 377. Thus, the Luminella court's analysis under the Vernonia test is inapplicable.

Finally, the Luminella court did not consider whether the court's order violated mother's rights under Article I, Section 8 of the Pennsylvania Constitution, which provides even broader protections than the Fourth Amendment in cases where a "special need" is present. See, e.g., Theodore v. Delaware Valley School Dist., 836 A.2d 76 (Pa. 2003) (holding that the random,

suspicionless drug screening of public high school students involved in extracurricular activities or in possession of a parking pass is an unreasonable search under Article I, Section 8 of the Pennsylvania Constitution, despite the school's "special need" to maintain a safe, appropriate learning environment).

For all of these reasons, Luminella cannot support a conclusion that CYS investigations present a "special need" that justifies the dispensation of the warrant and probable-cause requirements.

D. ***The children and youth agency failed to present sufficient evidence to support a finding of probable cause to compel Father to submit to an observable urine drug screen.***

In the instant matter, the agency presented testimony that it received an anonymous report on October 29, 2018 alleging that on October 12, 2018, Father was "observed to be impaired and/or under the influence of an unknown substance with one of his children present in his care." N.T., 1/28/18, pg. 5. On November 5, 2018, the agency received another anonymous report alleging that Father was seen "completely out of it" in another county. N.T., 1/28/18, pg. 6. On November 14, 2018, the agency received a third anonymous report alleging "a suspicion that Father is abusing an unknown substance…" N.T., 1/28/18, pg. 6, 22.

The Superior Court correctly concluded that this did not rise to the level of probable cause, and that it was error for the trial court to order Father to submit to an observable urine drug screen. Specifically, the court concluded:

> [W]hile there were three separate reports regarding Father's alleged intoxication, none contained any specificity regarding the degree or type of impairment, nor alleged how such impairment caused any of the children to be

> abused or neglected. Only the first report alleged that a child was even present when Father appeared to be under the influence. And even then, Fayette CYS did not obtain potentially available security footage to see for themselves.
>
> More importantly, none of the interviews with the children resulted in further suspicion of abuse or neglect.... Nor did Fayette CYS allege exigent circumstances; in fact, the allegations were months old.
>
> It appears here that CYS merely sought compliance so that they could close the investigation. See N.T., 1/28/19, at 48. These facts do not constitute a sufficient foundation for a finding of probable child abuse or neglect under the CSPL.... The court should have denied the request to compel further cooperation from the parents.

Interest of D.R., 216 A.3d 286, 294-96 (Pa. Super. 2019).

Appellant here repeatedly asserts that because the reports were "credible enough" and were received from "credible sources," probable cause existed to support the trial court's order. Appellant Br. pg. 11, 14. To suggest that the agency's extra-judicial determination of "credibility" is sufficient to support a finding of probable cause flies in the face of the nature of the probable-cause requirement - to protect individuals against unwarranted governmental intrusion. Credibility is a determination for the fact-finder alone.

Where a search is based upon information provided by an informant, courts must look to three factors to determine whether the information amounts to probable cause: (1) the informant's veracity, (2) the reliability of the information, and (3) the basis of the informant's knowledge. Com. v. Allen, 725 A.2d 737, 740 (Pa. 1999).

Here, the fact finder was unable to assess the informant's veracity, or the basis of the informant's knowledge. Because the "three separate reports" were anonymously made, it cannot be determined whether or not the reporting sources are distinct individuals. N.T., 1/28/18, pg. 9. Further, because the CYS investigator was not the individual who received the initial report, the

investigator was unable to question the source of the reporter's knowledge or ask more specific questions. See N.T., 1/28/18, pg. 10-11 ("I cannot speak to who spoke with the anonymous reporting source as [reports] typically do come through our Childline system, with the Childline worker who is questioning the person on the other end of the phone. So, the information we received is what we obtained.").

When assessing the reliability of the information, courts must consider the specificity of the information, the presence or absence of additional corroborating information, and the mechanism by which information is obtained. Metz, 177 A.3d at 392-93. Additionally, information based upon firsthand knowledge or personal observation is generally more trustworthy than information learned from other sources. Id. at 393.

Here, the first report failed to provide any specific information about how Father appeared to be "under the influence." N.T., 1/28/18, pgs. 10-11 ("Q: So, it gave no detail if [Father] had alcohol on [his] breath, if [Father] had a staggered gait? It gave no detail at all? A: That is correct."). Similarly, the second report alleges that Father was observed "completely out of it," without reference to what the reporting source specifically observed. The second and third reports make no reference to the specific date, time, or location at which Father was allegedly observed by the anonymous reporter. And, in the third report, there is no indication that the anonymous reporter had *ever* personally observed Father to appear under the influence.

Additionally, there is no corroborating evidence that would support the reliability of the reports. Although the initial report alleged that Father was "observed to be under the influence" in a government building where video surveillance footage may have been available to

corroborate or refute the allegations, the agency made no attempt to obtain the footage. N.T., 1/28/18, pg. 15-16.

Finally, even if the reports had contained more specific information about Father's alleged impairment, they do not provide any information that would support a conclusion that the impairment caused the abuse and/or neglect of any of his children. The agency met with and interviewed all of the children at school, and "there were no evident signs of child abuse or neglect." N.T., 1/28/18, pg. 28. The children, who are 15, 13, 10, 7, and 5 years of age, were asked "have they ever seen dad to be acting funny or weird," and "there was no disclosure." N.T., 1/28/18, pg. 27, 29, 30.

CYS failed to present sufficient evidence to support a finding of probable cause. Thus, even if this Court allows the proposed expansion of the CPSL to permit compulsory drug screening during a CYS investigation, the lack of evidence presented below also supported the Superior Court's vacatur of the order.

IV. The proposed expansion of Pennsylvania law increases the potential for drug testing orders to have a disparate impact on poorer people and people of color.

There is a tragic history of racism and racial profiling in U.S. criminal and civil legal systems and investigations. The National Council of Juvenile and Family Court Judges noted, "Research has demonstrated that minority children and families experience disparate decision-making in the investigation, substantiation, removal, placement in foster care, and final permanency determinations." Nat'l Council of Juvenile & Family Court Judges, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases 66 (2016), http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines

%2005-2016.pdf. Experts have also found that child maltreatment is "reported more often for low-income than middle- and upper-income families with similar presenting circumstances" demonstrating that child welfare investigations may be informed by assuming "the dysfunction of poor mothers and poor parents while making no similar presupposition about their wealthier counterparts." Khiara Bridges, The Poverty of Privacy Rights, p. 125 (2017) ("For example, research has revealed that doctors are more likely to diagnose physical injuries among poor families as "abuse" and to diagnose them as "accidents" among affluent families.")

Generally, minority families and poorer families are disproportionately impacted by the civil child welfare system. "In 2013, African American children comprised only 13.9% of the overall population of children in the United States but represented nearly double that percent in foster care at 26%." Tanya Cooper, Racial Bias in American Foster Care: The National Debate, 97 Marquette L. Rev. 215, 224 (2013); see also Candra Bullock, Low-Income Parents Victimized by Child Protective Services, 11 Am. UJ Gender Soc. Pol'y & L. 2 (2003.

Further, there is evidence that in the context of alleged drug use, race has been a determining factor in who is more likely to be recommended for testing and subjected to civil child welfare investigations. For example, drug testing of patients in healthcare settings, including during labor and delivery, is getting more and more common, as is the practice of turning those results over to child welfare authorities. These policies and practices disproportionately burden people of color. Despite the fact that drug use amongst Black and white women occurs at approximately the same rate in the U.S., studies and reports find that Black mothers and infants are more likely than their white counterparts to be drug tested by healthcare providers. Substance Abuse and Mental Health Services Administration, U.S. Dept. of

Health & Human Services, Results from the 2013 National Survey on Drug Use and Health Summary of National Findings (2014), https://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf. As leading researchers in one study concluded, "providers seemed to have used race as a factor in deciding whether to screen an infant for maternal illicit drug use." Emma Ketteringham et al., Healthy Mothers, Healthy Babies, 20 CUNY L. Rev. 77, fn. 53 (2016), referencing Marc A. Ellsworth et al., Infant Race Affects Application of Clinical Guidelines When Screening for Drugs of Abuse in Newborns, 125 Pediatrics 1379 (2010). See also Sarah CM Roberts, E Zahnd, C Sufrin, and MA Armstrong, Does adopting a prenatal substance use protocol reduce racial disparities in CPS reporting related to maternal drug use? 35 Journal of Perinatology 146 (2015). Furthermore, studies have also shown that even when universal drug testing protocols are used, Black mothers who test positive are still more likely to be reported to child welfare authorities than white mothers who also tested positive. Id.

These statistics and studies highlight the ways in which the system is already rife with racial and class bias, and how such biases determine who is likely to be drug tested and targeted for legal intervention. Consider analogous procedures that allowed wide discretion for officers to search individuals suspected of illegal or dangerous activity, that were later found to be racially discriminatory and unconstitutional. See Floyd v. City of New York, 959 F.Supp.2d 540 (S.D. N.Y. 2013) (court held law enforcement policy of stop, question and frisk - that was defended as necessary to conduct investigatory stops and weapons searches to ensure safety – was racially discriminatory and improperly used in violation of the 4th and 14th amendments); see also Bailey et al., v. City of Philadelphia, No. 1-5952 (E.D. Pa. filed Nov. 4, 2010) (federal class

action suit brought on behalf of Black and Latino men allegedly stopped by Philadelphia police officers because of race/ethnicity concluded through a settlement agreement requiring police to collect data on stop and frisk policy and conduct trainings.)

If this Court allows the proposed judicial expansion of Pennsylvania law, it is all but certain that it will be poorer and minority parents that disproportionately face this intrusion.

CONCLUSION

For the foregoing reasons, *amici* respectfully request this Court to affirm the Superior Court's decision in this matter and reject the proposed judicial expansion of Pennsylvania's child welfare law.

Respectfully Submitted,

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Dated: January 2, 2020

CERTIFICATION OF WORD COUNT

I hereby certify that this brief contains 6991 words, as determined by the word-count feature of Microsoft Word, the word- processing program used to prepare this brief.

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CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

I hereby certify, pursuant to Pa.R.A.P. 127, that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non- confidential information and documents.

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CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing Brief of Amici Curiae to be served upon the persons indicated below by PACFile and First Class Mail, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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Appendix A: Descriptions of Individual Amici

Amicus curiae **Center for Constitutional Rights** ("CCR") is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory state policies. In its work, CCR seeks to dismantle and mitigate the harms of state interventions which criminalize poverty and target communities of color. For example, CCR successfully litigated Floyd v. City of New York, a landmark lawsuit challenging the NYPD's intrusive practice of profiling Black and Latinx New Yorkers and subjecting them to stops and frisks in violation of the Fourth and Fourteenth Amendment. Similarly, CCR is working to oppose the criminalization of pregnancy and abortion, and unjust "Jane Crow" child welfare laws that deny resources to communities of color and subject families living in poverty to surveillance, investigation, and at times, family separation.

Amicus curiae **Center for Gender & 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 **Community Legal Services of Philadelphia** ("CLS") is a nonprofit organization that provides free legal assistance to low-income individuals on a broad range of civil matters, including public benefits, landlord/tenant, utilities, mortgage foreclosure, employment and other areas of great need in Philadelphia. While the Employment Unit handles a significant amount of more traditional employment law matters, the largest need for CLS' clients is addressing barriers to employment, such as criminal records and child abuse reports. Over the past five years, CLS' office has handled hundreds of abuse expungement cases. The Family Advocacy Unit (FAU) is a unit within CLS which provides high quality representation to hundreds of parents each year in Philadelphia dependency and termination of parental rights proceedings. As part of its mission, the FAU works to ensure that low-income vulnerable families involved with the child

welfare system receive the due process to which they are entitled and have meaningful access to justice in these extremely important proceedings. In addition to individual client representation, the FAU engages in policy advocacy and continuing legal education at both a statewide and local level to improve outcomes for children and families.

Amicus curiae **The Drug Policy Alliance** ("DPA") is a 501(c)(3) nonprofit and non-partisan organization with more than 20,000 members nationwide, which leads the nation in promoting drug policies that are grounded in science, compassion, health, and human rights. Established in 1994, DPA is dedicated to advancing policies that reduce the harms of drug use and drug prohibition, and seeking solutions that promote public health and public safety. DPA is actively involved in the legislative process across the country and strives to roll back the excesses of the drug war, block new, harmful initiatives, and promote sensible drug policy reforms. The organization also regularly files legal briefs as amicus curiae in cases throughout the United States, including in cases involving drug testing in various contexts. DPA opposes the expansion of routine drug testing, particularly in the absence of a judicial probable cause determination, and efforts to expand the executive agencies' discretion to invade families' privacy and threaten family integrity in the pursuit of unsound drug policies.

Amicus curiae **Families for Sensible Drug Policy** ("FSDP"), a 501(c)(3) nonprofit organization founded by President Carol Katz Beyer, is a global coalition of families, professionals, and organizations representing the voice of the family impacted by substance use and the harms of existing drug policies. FSDP empowers families by advancing and implementing a new paradigm of comprehensive care and progressive solutions for family support based on science, compassion, public health and human rights.

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 **Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

Amicus curiae **Legal Action Center** ("LAC") is a national, non-profit law and policy organization, with offices in New York and Washington, D.C., that fights discrimination against and promotes the privacy rights of individuals with criminal records, substance use disorders, and/or HIV/AIDS. LAC's work includes extensive policy advocacy to expand prevention and treatment opportunities for people with or at risk for substance use disorders and to oppose legislation and other measures that employ a punitive, rather than public health approach, to addiction. LAC has also represented individuals and substance use disorder treatment programs who face discrimination based on inaccurate stereotypes about the disease of addiction. The question posed in this case is of vital concern to LAC's constituency across the country.

Amicus curiae **Movement for Family Power** works to end the Foster System's policing and punishment of families and to create a world where the dignity and integrity of all families is valued and supported. Our Areas of Work include: Building out a loving, healthy community with and amongst people working to contract the Foster system; Raising social consciousness around the harms of the Foster System and forced family separation; Dismantling systems that surveil, control, and destroy families.

Amicus curiae **National Advocates for Pregnant Women** ("NAPW") is a nonprofit organization that advocates for the rights, health, and dignity of all

people, focusing particularly on pregnant and parenting women, and those who are most likely to be targeted for state control and punishment. Through litigation, representation of leading medical and public health organizations and experts as amicus, and through organizing and public education, NAPW works to ensure that people do not lose their constitutional, civil, and human rights as a result of pregnancy. The organization also conducts research and has published a peer-reviewed study on prosecutions of and forced medical interventions on pregnant women. NAPW believes that health and welfare problems, including substance use disorders, should be addressed as health issues not as crimes, and promotes policies that actually protect maternal and child health as well as families.

Amicus curiae **National Coalition for Child Protection Reform**, ("NCCPR") is an organization of professionals from the fields of law, psychology, social work, and journalism who are dedicated to improving child welfare systems through public education and advocacy. NCCPR is a tax-exempt non-profit organization founded at a 1991 conference at Harvard Law School. NCCPR is incorporated in Massachusetts and headquartered in Alexandria, Virginia. Further information about the organization is available on its website, www.nccpr.org

Amicus curiae **New Voices for Reproductive Justice**, is a reproductive justice organization that supports the human rights of parents in child welfare.

Amicus curiae **NYU School of Law Family Defense Clinic,** established in 1990, pioneered the use of interdisciplinary teams to advocate to keep families together. The clinic trains law and graduate social work students to represent parents in family court and to help families access services to keep children out of foster care. Faculty members teach, research, and write on child welfare, advocate for policy reform, and train advocates around the country. Clinic faculty have represented hundreds of children and parents in child protective proceedings.

Amicus curiae **SisterReach**, founded October 2011, is a Memphis, TN based grassroots 501c3 non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBTQIA+ and gender non-conforming

people and their families through the framework of Reproductive Justice. SisterReach's mission is to empower its base to lead healthy lives, raise healthy families and live in healthy communities.

Amicus curiae **The Women's Law Project**, ("WLP") is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women and members of LGBTQ communities. To this end, WLP engages in high-impact litigation, advocacy, and education. The core values of WLP are a belief in the right of all people to bodily integrity and personal autonomy; dedication to listening to women and members of LGBTQ communities and being guided by their experiences; and commitment to fairness, equality, and justice. WLP has worked on issues related to punishing pregnant or parenting women for drug use for over two decades, including as co-counsel to the plaintiffs in the U.S. Supreme Court case of Ferguson v. City of Charleston and co-counsel before the Pennsylvania Supreme Court in In Re LJB.

Individual Experts

** Institutional affiliations are provided for identification purposes only.*

Amicus curiae **Carol Katz Beyer** is the co-founder and President of Families for Sensible Drug Policy, where she advocates for drug policy reform while educating helping professionals about harm reduction strategies and solutions. Beyer recognizes that prohibition-based drug policies interfere with people's human rights, as well as individual and family safety, and people who use drugs and their families deserve support that treats them with dignity, individuality, and respect.

Amicus curiae **Avik Chatterjee, MD, MPH*** is a physician trained in internal medicine and pediatrics and additionally board certified in addiction medicine. One of Dr. Chatterjee's primary clinical roles is as the physician at a residential treatment program for women with substance use disorder, all of whom are either pregnant or have children or both. In Dr. Chatterjee's 5 years of clinical work with this population Dr. Chatterjee has seen many cases of inaccurate or ambiguous urine toxicology results that have negatively affected a mother, child, or both. Urine toxicology tests require expert level interpretation in conjunction with the

entire clinical picture in order to be accurate and helpful. Mandatory urine drug tests, observed or not, will doubtless result in erroneous conclusions and harm to families—even a test that is 99% accurate makes an error one time out of a hundred, and scaled to an entire state's population, the number of errors and damaged families is not worth any benefit.

Amicus curiae **David S. Cohen, J.D.*** is a professor of law at Drexel University's Thomas R. Kline School of Law. He is an expert in constitutional law and reproductive rights.

Amicus curiae **Stephanie S. Covington, PhD** is a clinician, author, organizational consultant, and lecturer. Recognized for her pioneering work in the area of women's issues, Dr. Covington specializes in the development and implementation of gender-responsive and trauma-informed services in both the public and private sectors.

Amicus curiae **Michael A. Grodin, MD, FAAP*** is a Professor of Health Law, Bioethics and Human Rights at Boston University School of Public Health and a Professor of Psychiatry and Family Medicine at the Boston University School of Medicine. He is the Co-Editor of 3 books on Health and Human Rights, a Fellow of the American Academy of Pediatrics, and the Co-Founder and Co-Director of the NGO "Global Lawyers and Physicians".

Amicus curiae **Hendrée Jones, PhD*** is a Professor in the Department of Obstetrics and Gynecology, School of Medicine, University of North Carolina, Chapel Hill and Executive Director of Horizons, a comprehensive drug treatment program for pregnant and parenting women and their drug-exposed children. She is also an Adjunct Professor in the Department of Psychiatry and Behavioral Sciences and in the Department of Obstetrics and Gynecology, School of Medicine, Johns Hopkins University. Dr. Jones is an internationally recognized expert in the development and examination of both behavioral and pharmacologic treatments of pregnant women and their children in risky life situations. Dr. Jones has received continuous funding from the United States National Institutes of Health since 1994 and has published over 195 peer-reviewed publications, two books on treating substance use disorders (one for pregnant and parenting women and the other for a

more general population of patients), several book and textbook chapters, and multiple editorial letters and non-peer reviewed articles for clinicians. She is a consultant for The Substance Abuse and Mental Health Services Administration, the United Nations and the World Health Organization. Dr. Jones leads or is involved in projects in Afghanistan, India, the Southern Cone, the Republic of Georgia, South Africa, and the United States which are focused on improving the lives of children, women and families.

Amicus curiae **Sarah Katz, J.D.***, Associate Clinical Professor of Law, Temple University Beasley School of Law, directs and teaches the Family Law Litigation Clinic, where her students handle custody, child and spousal support, adoption, and other family law matters in Philadelphia Family Court. She researches and writes about trauma-informed legal practice, the child welfare system, child custody, intimate partner violence, and other family law topics. Katz also frequently speaks on these topics at scholarly conferences and trainings for attorneys.

Amicus curiae **Dorothy E. Roberts, JD*** is the fourteenth Penn Integrates Knowledge Professor, George A. Weiss University Professor, and the inaugural Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights at University of Pennsylvania, where she holds appointments in the Law School and Departments of Africana Studies and Sociology. An internationally recognized scholar, public intellectual, and social justice advocate, she has written and lectured extensively on the interplay of gender, race, and class in legal issues and has been a leader in transforming public thinking and policy on reproductive health, child welfare, and bioethics. Professor Roberts is the author of the award-winning books *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (Random House/Pantheon, 1997) and *Shattered Bonds: The Color of Child Welfare* (Basic Books/Civitas, 2002), as well as co-editor of six books on constitutional law and gender. She has also published more than eighty articles and essays in books and scholarly journals, including Harvard Law Review, Yale Law Journal, and Stanford Law Review. Her latest book, *Fatal Intervention: How Science, Politics, and Big Business Re-create Race in the Twenty-First Century*, was published by the New Press in July 2011. Among her many public interest positions, Roberts is the chair of the Board of Directors of the Black Women's Health Imperative.

Amicus curiae **David Rudovsky***, is a Senior Fellow at the University of Pennsylvania Law School, and has significant experience in issues of privacy under the Fourth Amendment and Section I, Article 8 of the Pennsylvania Constitution, as a litigator, law school teacher, and scholar.

Amicus curiae **Cherisse Scott*** is the founder and CEO of SisterReach, located in Memphis, Tennessee and has served in the Reproductive Justice movement for 15 years. SisterReach is a grassroots 501c3 non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBTQ+ folx, gender non-conforming people and their families through the framework of Reproductive Justice.

Amicus curiae **Jane M. Spinak*** is the Edward Ross Aranow Clinical Professor of Law at Columbia Law School. A member of the Law School faculty since 1982, Spinak co-founded the Child Advocacy and Family Advocacy Clinics. She currently directs the Adolescent Representation Clinic, which represents adolescents and young adults aging out of foster care. During the mid-1990s, Spinak served as attorney-in-charge of the Juvenile Rights Division of The Legal Aid Society of New York City. In 2002, she became the founding chair of the board of the Center for Family Representation (CFR); she continues to serve on CFR's board. Spinak co-chaired the Task Force on Family Court in New York City created by the New York County Lawyer's Association from 2008 to 2011. Spinak is a member of the New York State Permanent Judicial Commission on Justice for Children.

Amicus curiae **Mishka Terplan, MD MPH FACOG DFASAM*** is an Obstetrician Gynecologist and Addiction Medicine Provider, and Senior Physician Research Scientist, Friends Research Institute.

Amicus curiae **Bruce G. Trigg, MD*** is a pediatrician, a public health and addiction medicine physician. Dr. Trigg worked with the New Mexico Department of Health for 23 years and is currently a consultant on addiction treatment for the New York State Department of Health, Office of Drug User Health, the New York

City Department of Health and Mental Hygiene and the Montana Department of Public Health and Human Services.

Amicus curiae **Michael S. Wald*,** Jackson Eli Reynolds Professor Law Emeritus at Stanford University, is a Professor of Law, focusing on issues related to children and the law. Professor Wald has been a member of the U.S Advisory Committee on Child Abuse, served as director of the San Francisco Department of Human Services, and served as a principal drafter of federal and state laws related to child maltreatment.

Amicus curiae **Tricia E. Wright, MD MS FACOG DFASAM*** recently moved to California from Hawai'i to become a Professor of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco (UCSF). She is board certified in both Obstetrics and Gynecology and Addiction Medicine and a Fellow of the American College of Obstetrics and Gynecology and a Distinguished Fellow of the American Society of Addiction Medicine. She has published multiple papers on pregnancy and addiction as well as a textbook *Opioid Use Disorders in Pregnancy* published in 2018 by Cambridge University Press. Dr. Wright completed her undergraduate degree in Biological Sciences from Stanford University, her MD from the University of Michigan. She completed her residency in Obstetrics and Gynecology from the University of New Mexico and obtained a Master's Degree in Clinical Research from the University of Hawai'i.