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Division III
State of Washington

No. 32354-4-III

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

E.G.,

Juvenile Appellant.

AMICUS CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON AND JUVENILE LAW CENTER

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *Amici Curiae* American Civil Liberties Union of Washington and Juvenile Law Center are set forth in the Motion for Leave to File, which accompanies this Brief.

II. ISSUE ADDRESSED BY *AMICI CURIAE*

1. Whether E.G.'s conviction should be dismissed because it rests on an absurd interpretation of the child pornography statute that contravenes the rehabilitative purposes of the Washington juvenile justice system, criminalizes normal adolescent exploration of sexual identity and relationships, and imposes harsh registration consequences as a sex offender.

III. STATEMENT OF THE CASE

As the parties' briefs explain, when E.G. was 17-years-old, he sent a text message with a photograph of his erect penis to a young adult woman whom he knew through his mother. The woman reported the incident to police, and the prosecutor chose to charge E.G. with the felony sex offense of dealing in depictions of a minor engaged in sexually explicit conduct under RCW 9.68A.050. E.G. was named as both the perpetrator and the victim of the crime. He was convicted and required to register as a sex offender, after the trial court rejected a motion to dismiss for insufficient evidence.

IV. ARGUMENT

A. E.G.'s Conviction Cannot Stand Because It Rests on an Absurd Interpretation of the Child Pornography Statute[1]

The Court's "primary duty in interpreting any statute is to discern and implement the intent of the legislature." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). "'[A] reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.'" *Id.* (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003) (Madsen, J., dissenting)); *see also Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002) ("This court, however, will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences. 'The spirit or purpose of an enactment should prevail over . . . express but inept wording.'" (footnotes and citations omitted)). Further, "[i]t is a general rule that statutes are construed to avoid constitutional difficulties when such construction is consistent with the purposes of the statute." *In re Pers. Restraint of Williams*, 121 Wn.2d 655, 665, 853 P.2d 444 (1993).

Consistent with these rules of statutory interpretation, this Court should conclude that the trial court erred in convicting E.G. for

[1] *Amici* further support Appellant's argument that RCW 9.68A.050 violates the First Amendment of the United States Constitution. App.'s Br. at 5.

distribution of child pornography. The only minor involved, E.G., voluntarily took and shared a photograph of his own body. For the reasons explained below, the criminalization of his conduct as distribution of child pornography is in conflict with the clear intent of child pornography laws and the specific purpose of the Washington child pornography statute. Accordingly, this Court should reverse the trial court decision and dismiss E.G.'s conviction.

1. The legislative history and purpose of child pornography laws demonstrate the law's protective intent.

Possession and distribution of child pornography are prohibited in order to "protect the victims of child pornography [and] . . . to destroy [the] market for the exploitative use of children." *Osborne v. Ohio*, 495 U.S. 103, 109, 110 S. Ct. 1691, 109 L. Ed. 2d 98 (1990); *see also New York v. Ferber*, 458 U.S. 747, 758, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982); RCW 9.68A.001 (the purpose of Washington's child pornography law is to prevent the "sexual exploitation and abuse of minors . . . by those who seek commercial gain or personal gratification . . . ."). The U.S. Department of Justice has explicitly underscored the link between its interest in prosecuting child pornography and the government's interest in protecting children: "To take child pornography more seriously is to take

sexual abuse of children more seriously, and vice versa." U.S. Dep't of Justice, Att'y Gen.'s Comm'n on Pornography, Final Rep., at 417 (1986).[2]

The U.S. Supreme Court has likewise emphasized that protecting the "physiological, emotional, and mental health of the child" victim is the purpose of child pornography laws, making them categorically distinguishable from bans on adult pornography, which violate the First Amendment. *Ferber*, 458 U.S. at 758; *Shoemaker v. Taylor*, 730 F.3d 778, 786 (9th Cir. 2013) (citing *Ferber* for the harm caused to children in child pornography). In *Ferber*, the Court recognized that the distribution of child pornography is intrinsically related to sexual abuse because it creates a permanent record of the abuse and perpetuates the market for production of material requiring the sexual exploitation of children. *Ferber*, 458 U.S. at 759. Further confirming the child-protection purpose of child pornography laws, the Court later rejected a prohibition of pornography that uses "virtual" children or adults who appear to be minors, because *Ferber*'s child protection justification was absent. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 249, 122 S. Ct. 1389, 152 L. Ed. 2d 403 (2002). The

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[2] The Report found that child pornography laws should address these four problems: (1) child pornography creates a permanent record of sexual abuse; (2) photographs of children engaged in sexual activity can be used as tools for further molestation of other children; (3) photographs of children engaged in sexual practices with adults can be used as evidence against those adults in prosecution for child molestation; and (4) harm to children creates a special interest in decreasing incentives to produce child pornography. U.S. Dep't of Justice, Att'y Gen.'s Comm'n on Pornography, Final Rep., at 410-12.

Court in *Free Speech Coalition* rejected the government's claim of potential harm to children based on the possibility that the images might cause pedophiles to molest children or be used by pedophiles to groom children, deeming this "indirect" because the harm "does not necessarily follow from the speech, but depends upon some unquantified potential for subsequent criminal acts." *Id.* at 250.

The interests protected by child pornography laws are not advanced in the instant case, where there are no exploited child victims. E.G. voluntarily took and shared the photo of himself:

> Just as with virtual child pornography, no crime is being committed when a teen takes a nude photograph of herself. Nudity alone is not criminalized, even among minors. Moreover, sexting does not create victims at the time of its production. Participants willingly create . . .these images. Furthermore, sexting is not intrinsically related to the sexual abuse of children as none of these teens are being coerced into sexual activity by oppressive child pornographers. Thus, just as virtual child pornography could not be made criminal, neither should sexting.

Shannon Shafron-Perez, *Average Teenager or Sex Offender? Solutions to the Legal Dilemma Caused by Sexting*, 26 J. Marshall J. Computer & Info. L. 431, 450 (2009). Any prospective harm to E.G. would be an "indirect" injury and dependent on "unquantified potential for subsequent criminal acts." *See Free Speech Coal.*, 535 U.S. at 250. Accordingly, E.G.'s

conduct is squarely outside the *Ferber* exception to First Amendment protection.

2. The purpose of Washington's sexual exploitation statute does not support charging or convicting E.G. for distribution of child pornography.

Consistent with the historical underpinnings of child pornography laws, Washington's sexual exploitation statute is focused on protecting children and youth. *See* RCW 9.68A.001 ("[T]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance . . . ."). The law's presumption that children and youth are categorically vulnerable and incapable of giving meaningful consent to prohibited sexual conduct is meaningless if the perpetrator and the victim are the same person, as is the case here. The plain text of the statute confirms that its purpose is to prevent the "sexual exploitation and abuse of minors . . . by those who seek commercial gain or personal gratification . . . ." *Id.*; *see also* 13B Seth A. Fine & Douglas J. Ende, *Washington Practice Series: Criminal Law* § 2501 (2015-2016 ed.).

The statute's focus on combatting child abuse animated the 2010 amendment of RCW 9.68A.050, which made the penalties for distribution of child pornography more severe in light of increased access to child pornography through technology. Laws of 2010, ch. 227, § 1. The statute

specifically invokes those who pay to engage children in sexual acts, stating:

> Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

RCW 9.68A.001. This language further clarifies the purpose of the law: to protect children from sexual abuse by *others*, not to criminalize conduct wholly unrelated to the "sexual exploitation and abuse of minors." *Id.*

E.G.'s prosecution and conviction are neither for his own protection, nor for the protection other youth. The statute reasonably does not contemplate the possibility of a youth freely deciding to photograph his own body, as E.G. cannot criminally "exploit" or "abuse" himself. Indeed, he is a member of the class of persons the law is intended to protect: children. Moreover, he did not create a pornographic image or video to abuse or exploit another child.

The law's intentions, through its legislative history and judicial interpretation, could not be clearer: prosecuting E.G. in the name of "protecting" him is contrary to the juvenile court's responsibility to youth under its care. No other criminal statute contemplates that both the perpetrator and the victim of the alleged crime could be the same person,

highlighting the absurdity of E.G.'s conviction. But for the fact that E.G. was under the age of eighteen when he took and shared the photo of his own body, the State would not have been able to charge E.G. under RCW 9.68A.050 for any felony sex offense. If E.G. engaged in the same exact conduct just three months later, when he had reached the age of majority, he could not be charged with distribution of child pornography. CP 66-67.

B. The Interpretation and Application of the Child Pornography Statute to These Facts Contravenes the Rehabilitative Purposes of Washington's Juvenile Justice System

Courts across the country, including the U.S. Supreme Court, routinely take into account the immaturity and inexperience of juveniles when prosecuting and punishing young offenders. *See, e.g.*, *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (striking down mandatory life without parole sentences for juveniles); *J.D.B. v. North Carolina*, 564 U.S. ___, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (holding that a youth's age should be considered when determining custody for *Miranda* purposes); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (prohibiting life-without-parole sentences for juvenile, non-homicide offenders); *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (abolishing the death penalty for youth under the age of 18). These holdings rest, in part, on the well-settled research demonstrating that adolescent brains are

different from adult brains. Research shows, and courts have held, that these differences impact the ability of adolescents to understand the consequences of their actions, control their emotions, understand the influence of their peers, and make rational decisions, thereby reducing the youth's culpability for his conduct. *See, e.g.*, *Roper*, 543 U.S. at 569; *Miller*, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68.

The Washington Supreme Court has similarly acknowledged that young offenders should be treated differently. *See, e.g.*, *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) (holding that age should be considered as possible mitigating factor at sentencing); *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015) (upholding sealing of juvenile court records); *see also State v. E.J.J.*, 183 Wn.2d 497, 528, 354 P.3d 815 (2015) (González, J., concurring) (noting juvenile's immaturity in reversing and dismissing his conviction for obstruction). Washington's juvenile justice system has always recognized that youth matters: "The history of juvenile justice [in Washington] is a history of bringing together long-standing tenets of common law with continuously evolving notions of criminology and the nature of juvenile development." *S.J.C.*, 183 Wn.2d at 417. Accordingly, the purpose of the Juvenile Justice Act of 1977 ("JJA"), RCW 13.40 *et seq.* is to "establish 'a system capable of having primary responsibility for, being accountable for, and responding

to the needs of youthful offenders' while ensuring that juveniles will 'be held accountable for their offenses.'" *S.J.C.*, 183 Wn.2d at 416 (quoting RCW 13.40.010).

E.G.'s prosecution and conviction for distribution of child pornography is inconsistent with the goals of the juvenile justice system, particularly where the State does not dispute that the only victim of E.G.'s crime is E.G. himself. If affirmed by this Court, E.G.'s conviction will brand him a sex offender for *at least a decade* — a stigmatizing label that not only requires compliance with onerous registration requirements, but also presents significant barriers to E.G.'s integration into society as an adult. *See infra* Section D. Indeed, there is nothing "rehabilitative" about the State's prosecution and conviction of E.G. under RCW 9.68A.050. *Cf. State v. Chavez*, 163 Wn.2d 262, 271-72, 180 P.3d 1250 (2008) (noting "the predominantly rehabilitative philosophy of the juvenile justice system and the punitive philosophy of the adult criminal system").

C. In Contrast to the Child Pornography Statute's Focus on Sexual Abuse, Prosecuting Teenage Sexting Criminalizes Normative Adolescent Exploration of Sexual Identity and Relationships

Prosecuting a 17-year-old who voluntarily took and shared a photograph of himself for distribution of child pornography is not only unnecessarily harsh and punitive; it serves no penological or public safety

purpose. Rather, criminalizing teenage sexting criminalizes typical adolescent conduct — a result far removed from the purpose of the statute.

While adults may consider it unwise or reckless, the sending or receiving of digital sexual photos of oneself or one's partner is a normal part of contemporary adolescent behavior. The average teen now sends approximately 60 text messages every day. *See* Andrew J. Harris, *Understanding the World of Digital Youth*, *in* ADOLESCENT SEXUAL BEHAVIOR IN THE DIGITAL AGE: CONSIDERATIONS FOR CLINICIANS, LEGAL PROFESSIONALS, AND EDUCATORS 24, 28 (Fabian Saleh, Albert Grudzinskas, & Abigail Judge, eds., Oxford University Press 2014). Researchers estimate that between 20 and 28 percent of teenagers have engaged in sexting.[3] One study found that roughly 70 percent of teens who sexted had sent the image to their significant other. *See* Cox Communications, National Center for Missing and Exploited Children, & John Walsh, *Teen Online & Wireless Safety Survey: Cyberbullying, Sexting, and Parental Controls* at 36 (2009), *available at* http://www.scribd.com/doc/20023365/2009-Cox-Teen-Online-Wireless-

[3] *See, e.g.*, Jeff R. Temple et al., *Teen Sexting and Its Association with Sexual Behaviors*, 166 Archives of Pediatric & Adolescent Med. 828, 829 (2012); Cox Communications, National Center for Missing and Exploited Children, & John Walsh, *Teen Online & Wireless Safety Survey: Cyberbullying, Sexting, and Parental Controls* at 11 (2009), *available at* http://www.scribd.com/doc/20023365/2009-Cox-Teen-Online-Wireless-Safety-Survey-; Nat'l Campaign to Prevent Teen & Unplanned Pregnancy & Cosmogirl.com, *Sex and Tech: Results from a Survey of Teens and Young Adults* at 1 (2008), *available at* http://www.afim.org/SexTech_Summary.pdf.

Safety-Survey-. Among teens who have sent nude or semi-nude text messages, 66 percent of girls and 60 percent of boys say they did so to be "fun or flirtatious," and 40 percent of girls say they sent sexually suggestive texts as a "joke." Nat'l Campaign to Prevent Teen & Unplanned Pregnancy & Cosmogirl.com, *Sex and Tech: Results from a Survey of Teens and Young Adults* at 4 (2008), *available at* http://www.afim.org/SexTech_Summary.pdf.

Young people engage in risk-taking behaviors because of their "lack of maturity and underdeveloped sense of responsibility." *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)); *see also Miller*, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 72; *E.J.J.*, 183 Wn.2d at 528 (González, J., concurring) ("We should not criminalize and pathologize typical juvenile behavior.").

Sexual exploration is indisputably normal adolescent behavior. Learning to think of oneself as a sexual being and dealing with sexual feelings is an important part of adolescence, and sexual experimentation is one aspect of the "trying on" of different personalities and new behaviors that is necessary to the process of identity development. Jennifer Woolard, *Adolescent Development*, *in* TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM 13, 15 (2009).

"[T]hrough experimentation and risk-taking . . . adolescents develop their identity and discover who they will be." Lynn E. Ponton & Samuel Judice, *Typical Adolescent Sexual Development*, 13 Child Adolescent Psychiatric Clinics N. Am. 497, 508 (2004).

Nevertheless, the stakes for engaging in this normal and natural behavior are heightened today not because teenagers have changed, but because the means of communication and expression at their disposal has. Sexting is a phenomenon inextricably linked with 21st century technology; transmission of sexual images is much simpler and quicker when teenagers do not need to purchase film for cameras, get the resulting photos developed, buy stamps, and put the photos in the mail. None of this, however, converts impulsive adolescent sexual behavior into felony distribution of child pornography.

Prosecutors and courts around the country are beginning to recognize that sexting should not be handled through child pornography prosecutions.[4] *See, e.g.*, *Miller v. Mitchell*, 598 F.3d 139, 146-47 (3d Cir. 2010) (during pendency of appeal, prosecutor confirmed that child

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[4] Erik Eckholm, *Prosecutors Weigh Teenage Sexting: Folly or Felony*, N.Y. Times, Nov. 13, 2015, http://www.nytimes.com/2015/11/14/us/prosecutors-in-teenage-sexting-cases-ask-foolishness-or-a-felony.html; Assoc. Press, *North Carolina Teen Texting Case Highlights Gray Areas In Child Pornography Laws*, The Chron.-Telegram, Sept. 24, 2015, http://chronicle.northcoastnow.com/2015/09/24/north-carolina-teen-sexting-case-highlights-gray-areas-in-child-pornography-laws/; Tom Jackman, *Manassas City Police Say They Will Not Serve Search Warrant In Teen 'Sexting' Case*, Wash. Post, July 10, 2014, https://www.washingtonpost.com/blogs/local/wp/2014/07/10/manassas-city-police-say-they-will-not-serve-search-warrant-in-teen-sexting-case/.

pornography charges would not be brought against two of the minor plaintiffs); *N.D. v. United States*, 1 F. Supp. 3d 1240, 1244 (N.D. Ala. 2014) ("The court is particularly troubled by the application of the Sentencing Guidelines to 'sexting' cases . . . . Regardless of the appropriateness of engaging in such virtual conversations, the court doubts that this behavior is the kind that Congress was targeting when it passed child pornography laws."); *State v. C.M.*, 154 So. 3d 1177 (Fla. Dist. Ct. App. 2015) (affirming dismissal of juvenile delinquency petition based on trial court's finding that juvenile's sexting offense did not constitute a delinquent act). This Court should similarly find that the trial court erred by convicting E.G.

D. The Registration Consequences of Convicting E.G. of Felony Child Pornography Further Demonstrate the Absurdity of the Lower Court's Interpretation

The erroneousness of E.G.'s conviction is compounded by the fact that it requires E.G. to register as a sex offender for ten years, even though he is truly not a sex offender. RCW 9A.44.140. Juvenile sex offender registration for conduct like E.G.'s is in direct conflict with the U.S. Supreme Court's statement that juvenile courts were established to "provide guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." *Kent v.*

United States, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

The Washington Supreme Court has also recognized that:

> The stigma of an open juvenile record and the negative consequences that follow are particularly unjustifiable in light of the fact that the mind of a juvenile or adolescent is measurably and materially different from the mind of an adult, and juvenile offenders are usually capable of rehabilitation if given the opportunity.

S.J.C., 183 Wn.2d at 433 (citing *Miller*, 132 S. Ct. at 2464-65 & n.5) (in considering whether juvenile court records should be sealed upon completion of statutory requirements). Sex offender registration will subject E.G. to serious harms that are disproportionate to the conduct at issue here.

1. E.G. would have to comply with extensive and onerous registration requirements, noncompliance with which would subject E.G. to additional criminal consequences.

If this Court upholds E.G.'s conviction, he will be subject to extensive and onerous registration requirements for at least ten years, and failure to comply with these requirements completely will subject E.G. to additional criminal convictions — all because he voluntarily shared a photograph of his own body. Whenever E.G. changes his residence, he must provide his new address to the county sheriff within three days. RCW 9A.44.130. If he does not have a fixed residence, he must report weekly, in person, to the county sheriff. RCW 9A.44.130(6)(b). He must

notify the sheriff at least three days prior to beginning to attend or work at a school or institute of higher education. RCW 9A.44.130(1)(b). If E.G. fails to complete any of these onerous requirements, he may be convicted of a Class C felony. RCW 9A.44.132.

If E.G. moves to another state — or even temporarily resides there for school or work — in addition to the notification he must give to Washington authorities, RCW 9A.44.130(3), he will have to navigate that state's own complex, inconsistent and ever-changing registration requirements, a task that is daunting for attorneys and nearly impossible for registrants. *See* Catherine L. Carpenter & Amy Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 Hastings L.J. 1071, 1076-1100 (2012) (discussing various state sex offender registration schemes). Even stepping foot into some states can trigger registration requirements, which could be more public, harsher, or require a longer registration period.

2. E.G.'s registration information may be disseminated to members of the public, impacting his integration into society as an adult.

Although E.G.'s registration information would be kept on a "non-public" registry, confidentiality or non-disclosure is not guaranteed. *See* Wayne A. Logan, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA 229 (2009) (noting that

historically no registry has ever been effectively kept private). Offense information about level 1 offenders, which is what E.G. would be if this Court upheld his conviction, is automatically provided to any school an offender attends or plans to attend. Upon request, a law enforcement agency may disclose "relevant, necessary, and accurate information to any victim or witness to the offense, any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found, and any individual who requests information regarding a specific offender." RCW 4.24.550(3). Additionally, no law prevents members of the public from making fliers, posting notices on social media websites, or informing neighbors, employers, schools and others. *See* Assoc. Press, *Washington Judges Withhold Sex Offender Data*, The Spokesman-Review, Apr. 13, 2014, http://www.spokesman.com/stories/2014/apr/13/washington-judges-withhold-sex-offender-data/. Further, if E.G. is either out of compliance with the stringent registration requirements set forth below, or lacks a fixed address, his name, block of residence, photograph, physical description, and conviction will be posted on the state's public sex offender registry. RCW 4.24.550(5a). He will also be guilty of a class C felony.

3. If required to register, E.G. would be subjected to the lifelong consequence of being perceived as a dangerous sex offender.

Although E.G.'s conduct consisted of nothing more than sharing a photo of his own body, he will be subject to the same assumptions and discrimination as juveniles and adults who have committed serious sex crimes. Children labeled as "sex offenders" are viewed by the public as dangerous. *Neal v. Shimoda*, 131 F.3d 818, 829 (9th Cir. 1997) ("We can hardly conceive of a state's action bearing more 'stigmatizing consequences' than the labeling . . . as a sex offender."). As former Washington Supreme Court Justice Utter noted in his dissent in *City of Seattle v. Buchanan*:

> If the convictions of these students are allowed to stand, these young women will carry with them throughout their lives a record of conviction for lewd conduct, yet, everyone concerned concedes that, but for the arbitrary definition of that crime . . . , the [women] neither acted nor intended to act in a 'lewd' manner as that term is used in reference to the other acts specified. Such a criminal record, and the implication of a disposition to commit acts of extreme vulgarity which necessarily accompanies it, may do these [women] incalculable harm in future years.

90 Wn.2d 584, 611, 584 P.2d 918 (1978) (Utter, J., dissenting).

Treating E.G.'s conduct as felony distribution of child pornography will subject him to assumptions that will harm his ability to obtain stable housing, employment, and schooling. Of the nearly 300

youth offender registrants whose cases were assessed in a Human Rights Watch report, almost half (132) indicated they had experienced at least one period of homelessness as a result of the restrictions caused by registration. *See* Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* at 65 (May 2013), *available at* https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf ("*Raised on the Registry*"). Landlords may refuse to rent to a young adult after that landlord has been contacted by the sheriff to verify an address. In addition, some juvenile registrants cannot live in public housing, which may require parents to either prohibit their child from living with them or move. 42 U.S.C. § 13663(a); 24 C.F.R. 960.204. Youth subject to registration continuously report that finding or keeping employment is one of the most constant challenges relating to registration. *Raised on the Registry* at 50. Sex offender registration also inhibits a child's ability to succeed in school. *Id.*

E.G. would be harmed by sex offender registration requirements, as it is well-documented that registration leads to depression, hopelessness, and fear for one's safety. *Raised on the Registry passim*. In extreme cases, sex offender registration has led juveniles to suicide. *Id.* Many registrants experience vigilante activities such as property damage, harassment, and even physical assault. *Id.* Neurological studies have

shown that adolescents are "especially vulnerable to the stigma and isolation that registration and notification create," and because youth who are labeled as "sex offenders" often experience rejection from peer groups and adults, they are less likely to attach to social institutions like schools and churches. Justice Policy Institute, *Registering Harm: How Sex Offense Registries Fail Youth and Communities* at 24 (2008), *available at* http://www.justicepolicy.org/images/upload/08-11_rpt_walshactregisteringharm_jj-ps.pdf. This lack of attachment is detrimental to a young person's rehabilitation and development. Candace Kruttschnitt et al., *Predictors of Desistance Among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 Justice Quarterly 61 (2000).

V. CONCLUSION

Convicting E.G. for the distribution of child pornography in this case is an absurd interpretation of a statute intended to protect children from abuse. Punishing E.G. for taking a photo of his own body is in conflict with the decisions of the United States Supreme Court, the Washington Supreme Court, and the legislative history of the child pornography law. Therefore, *Amici* respectfully request that this Court reverse the trial court decision and dismiss E.G.'s conviction.

Respectfully submitted this 30th day of November, 2015.

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COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION III

No. 32354-4-III

State of Washington v. E.G.

DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below, I caused to be served a copy of the *Amici Curiae* Brief of American Civil Liberties Union of Washington and Juvenile Law Center via email with consent and submission to the Division III JIS Link system to the following addresses:

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