

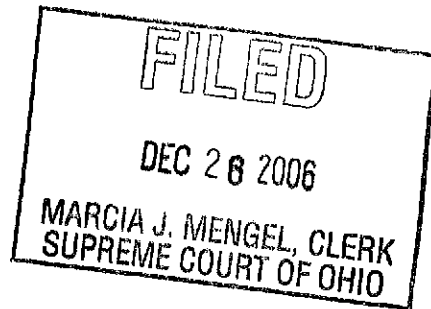
IN THE SUPREME COURT OF OHIO

IN RE: COREY SPEARS, : CASE NO. 06-1074
A MINOR CHILD : On appeal from the Licking
: County Court of Appeals,
: Fifth Appellate District
:
: C.A. Case No. 2005-CA-93

MEMORANDUM OF AMICI CURIAE

Kim Brooks Tandy (#0076173)
Children's Law Center, Inc.
104 East 7th Street
Covington, Kentucky 41011
859-431-3313
Fax: 859-655-7553
kimbrooks@fuse.net
COUNSEL FOR AMICUS CHILDREN'S LAW CENTER, INC.

Jeffrey M. Gamso (#0043869)
ACLU of Ohio Foundation
American Civil Liberties Union
4506 Chester Avenue
Cleveland, Ohio 44103-3621
216-472-2220
Fax: 216-472-2210
jmgamso@acluohio.org
COUNSEL FOR AMICI AMERICAN CIVIL LIBERTIES UNION FOUNDATION and
AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION



Yeura R. Venters (#0014879)
Franklin County Public Defender
373 S. High St., 12th Fl
Columbus, Ohio 43215
614-719-8877
Cell: 614-330-5800
yrventer@franklincountyohio.gov
COUNSEL FOR AMICUS FRANKLIN COUNTY PUBLIC DEFENDER

Kay Locke (#0014049)
Montgomery County Public Defender
117 South Main Street, Fourth Floor
Dayton, Ohio 45422
937-225-5434
lockek@mcoho.org
COUNSEL FOR AMICUS MONTGOMERY COUNTY PUBLIC DEFENDER

Emily Hagan (#0080667)
Voices for Ohio's Children
4019 Prospect Avenue
Cleveland, Ohio 44103
216-881-7860
emily@voicesforclevelandschildren.org
COUNSEL FOR AMICUS VOICES FOR OHIO'S CHILDREN

Jeffrey M. Gamso (#0043869)
Children's Defense Fund
395 E. Broad Street
Suite #300
Columbus, Ohio 43215
614-221-2244
COUNSEL FOR AMICUS CHILDREN'S DEFENSE FUND

Emily Hagan (#0080667)
Juvenile Justice Coalition
P.O. Box 477
Bath, Ohio 44210-0477
330-666-8596 (phone/fax)
emily@voicesforclevelandschildren.org
COUNSEL FOR AMICUS JUVENILE JUSTICE COALITION

Linda Julian (#0056195)
Juvenile Justice Advocacy Alliance
1849 Prospect Ave.
3rd Floor
Cleveland, Ohio 44115
216-621-3898
attorneyjulian@aol.com
COUNSEL FOR AMICUS JUVENILE JUSTICE ADVOCACY ALLIANCE

Linda Julian (#0056195)
Alternatives for Youth
1849 Prospect Ave.
3rd Floor
Cleveland, Ohio 44115
216-621-3898
attorneyjulian@aol.com
COUNSEL FOR AMICUS ALTERNATIVES FOR YOUTH

Jeffrey M. Gamso (#0043869)
National Association of Counsel for Children
1825 Marion Street, Suite 242
Denver, Colorado 80218
303-864-5323
<http://www.NACCchildlaw.org>
COUNSEL FOR AMICUS NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

MELINDA SEEDS (#0063227)
Licking County Assistant Prosecutor

DAVID H. BODIKER (#0016590)
State Public Defender

ERIC WELCH (#0071240)
Licking County Assistant Prosecutor
(COUNSEL OF RECORD)

AMANDA J. POWELL (#0076418)
Assistant State Public Defender
(COUNSEL OF RECORD)

Licking County Prosecutor's Office
20 South Second Street
Newark, Ohio 43055
740-349-6195
Fax: 740-349-6179

Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215
614-466-5394
Fax: 614-752-5167
amanda.powell@opd.ohio.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE INTEREST OF THE AMICI CURIAE.....1

STATEMENT OF THE CASE AND FACTS5

ARGUMENT

Petitioner's Second Proposition of Law

 Waiver of Counsel by Children Should be Permitted only Upon Strict Compliance with Constitutional Safeguards that can Ensure that Waiver is Knowing, Intelligent and Voluntary, and Thus Comports with the Due Process Requirements of the Fifth and Fourteenth Amendment to the United States Constitution, and Article 1, Section 16 of the Ohio Constitution.....5

Proposition of Law of Amici Curiae

 A Majority of Other States has Taken Steps to Ensure Meaningful Access to Counsel by Restricting Waiver through Statutory Provisions and/or Case Law; Further Support for Restricting Waiver is Found in the Positions of Several National Organizations11

CONCLUSION21

CERTIFICATE OF SERVICE23

Table of Authorities

Page

CASES:

A.L. v. State, 841 So. 2d 676 (Fla. App. 4th Dist. 2003)15

Bellotti v. Baird, 443 U.S. 622 (1979)8

In re B.M.S., 165 Ohio App. 3d 609, 2006-Ohio-98114

Breed v. Jones, 421 U.S. 519 (1975) 5-6

Commonwealth v. Wertheimer, 472 N.E.2d 266 (Mass. App. Ct. 1984).....13

C.K. v. State, 909 So. 2d 602 (Fla. App. 2d Dist. 2005).....14, 16

C.V. v. State, 915 So. 2d 664 (Fla. App. 1st Dist. 2005)14

D.K. v. State, 881 So. 2d 50 (Fla. App. 4th Dist. 2004)..... 14-15

D.R. v. Commonwealth, 64 S.W.3d 292 (Ky. App. 2001).....15, 17

In re Amos, 3d Dist., 154 Ohio App. 3d 434, 2003-Ohio-5014, 797 N.E.2d 56815

In re Bays, 2d Dist., 2003-Ohio-1256.....15

In re C.A.C., 2d Dist., 2006-Ohio-400314

In re Christopher H., 359 S.C. 161, 596 S.E.2d 500 (S.C. 2004).....15, 17

In re Doyle, 2d Dist., 122 Ohio App. 3d 767 (1997)6

In re East, 105 Ohio App. 3d 221, 663 N.E.2d 983 (1995).....7

In re Estes, 4th Dist., 2004-Ohio-516314

In re Gault, 387 U.S. 1 (1967).....5, 6, 11, 20

In re Husk, 4th Dist., 2002-Ohio-400015

In re J.F.C., 660 P.2d 7 (Colo. App. 1982)13

In re J-M.W., 9th Dist., 2006-Ohio-6156.....14

<i>In re Johnston</i> , 11th Dist., 142 Ohio App. 3d 314 (2001).....	7
<i>In re Kash</i> , 12th Dist. 2002-Ohio-1425	15
<i>In re Kindred</i> , 5th Dist., 2004-Ohio-3647	15
<i>In re Manual</i> , 543 A.2d 719 (Conn.1988)	13
<i>In re Manns</i> , 9th Dist., 2002-Ohio-85.....	15
<i>In re Nation</i> , 61 Ohio App. 3d 763 (1989)	7
<i>In re R.B.</i> , 2d Dist., 2006-Ohio-264.....	14
<i>In re Ratliff</i> , 12th Dist., 2002-Ohio-2070	15
<i>In re Royal</i> , 132 Ohio App. 3d 496 (1999).....	16
<i>In re S.J.</i> , 9th Dist., 2006-Ohio-4467.....	14
<i>In re Solis</i> , 124 Ohio App. 3d 547 (1997).....	7
<i>In re Stanford</i> , 9th Dist., 2002-Ohio-3755.....	15, 16
<i>In re Styer</i> , 3d Dist., 2002-Ohio-6273	15
<i>In re Vaughters</i> , 8th Dist., 2002-Ohio-5843	15
<i>In re William B.</i> , 6th Dist., 163 Ohio App. 3d 201, 2005-Ohio-4428	14
<i>In re Winship</i> , 397 U.S. 358 (1970).....	5
<i>J.R.I. v. State</i> , 898 So. 2d 1093 (Fla. App. 1st Dist. 2005).....	14
<i>John L. v. Adams</i> , 969 F.2d 228 (6th Cir. 1992).....	6
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	7
<i>K.E.N. v. State</i> , (Fla. App. 5th Dist. 2005).....	14, 17
<i>Kent v. United States</i> , 383 U.S. 541 (1966).....	5
<i>M.Q. v. State</i> , 818 So. 2d 615 (Fla. App. 5th Dist. 2002).....	15
<i>Moore v. Michigan</i> , 355 U.S. 155 (1957).....	7

<i>N.M. v. State</i> , 791 N.E.2d 802 (Ind. App. 2003).....	15
<i>Ohio v. Davis</i> , 56 Ohio St. 2d 51 (1978)....	7
<i>Powell v. Alabama</i> , 287 U.S. 45 (1932)	6
<i>S.H. v. State</i> , 933 So.2d 1250 (Fla. App. 1st Dist. 2006).....	14
<i>State v. B.P.</i> , 810 So. 2d 918 (Fla. 2002).....	15
<i>State v. Gibson</i> , 45 Ohio St. 2d 366 (1946)	7
<i>State v. Riggins</i> , 44 P.3d 615 (Or. App. 2002).....	15
<i>State v. Rodriguez</i> , 559 S.E.2d 435 (Ga. 2002)	15
<i>State v. T.G.</i> , 800 So. 2d 204 (Fla. 2001).....	15
<i>T.H. v. State</i> , 899 So.2d 504 (Fla. App. 2d Dist. 2005).....	14

CONSTITUTIONAL PROVISIONS:

Ohio Constitution, Section 16, Article I	5, 11
U.S. CONST. amend. V	5, 11
U.S. CONST. amend. VI.....	6
U.S. CONST. amend. XIV, § 1	5,10, 11

STATUTES; ADMINISTRATIVE RULES:

FLA. R. JUV. P. Rule 8.165(b)	16, 17
IND. CODE ANN. § 31-32-5-1(1)-(3) (West 2006)	13
IOWA CODE ANN. § 232.11 (West 2006).....	12
IOWA CODE ANN. § 232.11(1)(a)-(f) (West 2006)	12-13
IOWA CODE ANN. § 232.11(2) (West 2006)	13
KAN. ATTY. GEN. OP. No. 94-53 (1994).....	13
KY. REV. STAT. ANN. § 610.060(2)(b) (West 2006).....	13

LA. CHILD. CODE ANN. art. 810(A)(1)-(3) (West 2006)	13
MD. CODE. ANN. § 3-8A-20(b)(3)-(4) (West 2006).....	13
MD. JUV.R. Rule 11-106(b).....	13
MONT. CODE ANN. § 41-5-1413 (West 2006).....	13
N.J. Stat. Ann. § 2A: 4A-39(b)(1)-(2) (West 2006).....	13
N.M. STAT. ANN. § 32A-2-14(H) (West 2006).....	12
N.C. GEN. STAT. ANN. § 7B-2000 (West 2006).....	13
N.C. GEN. STAT. ANN. § 7B-2000(a) (West 2006)	12
OHIO JUV.R. 3	11
OHIO JUV.R. 29	16
OHIO JUV.R. 29(B)	16
OHIO JUV.R. 29(B)(3)	15
OHIO JUV.R. 29(B)(5).....	15
OHIO JUV.R. 29(D)	16
OHIO JUV.R. 37	7
OKLA. STAT. ANN. tit. 10, § 24 (West 2006)	12
OKLA. STAT. ANN. tit. 10, § 24(A)(1) (West 2006)	13
OKLA. STAT. ANN. tit. 10, § 7303-3.1 (West 2006)	12
42 PA. CONS. STAT. ANN. § 6337 (West 2006).....	14
S. CT. PRAC. R. VI, § 5.....	4
UTAH R. JUV. P. Rule 26(e).....	13
VT. R. FAM. P. Rule 6(d)(3)(A)-(D).....	13
VT. R. FAM. P. Rule 6(d)(4).....	13

VA. CODE ANN. § 16.1-266(c)(3) (West 2006).....	13
WASH. REV. CODE ANN. § 13.40.140(10) (West 2006).....	13
WIS. STAT. ANN. § 938.23(1m)(a) (West 2006).....	13
WYO. STAT. ANN. § 14-6-222 (West 2006).....	13

PROPOSED LEGISLATION:

Arizona H.B. 2614 (2005)	14
Connecticut H.B. 6360 (2005).....	14
Florida S.B. 1218 (2005)	14
Florida H.B. 529 (2006).....	14
Florida S.B. 526 (2006)	14
Georgia S.B. 135 (2005).....	14
Illinois H.B. 166 (2006).....	14
Illinois S.B. 1953 (2005).....	14
Illinois S.B. 1952 (2006).....	14
Indiana S.B. 357 (2006).....	14
Mississippi H.B. 199 (2006).....	14
Nebraska L.B. 112 (2005).....	14
Texas S.B. 662 (2005)	14
Vermont H.B. 306 (2005).....	14
Virginia H.B. 2670 (2005).....	14
Washington H.B. 1531 (2006).....	14
Washington H.B. 1644 (2006).....	14
Washington H.B. 2343 (2006).....	14

OTHER AUTHORITY:

Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137 (1997)9

Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases (2005)19

Juvenile Justice Standards: Pretrial Court Proceedings 6.1(A)18

Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 CRIM. JUST. 26, 27 (Summer 2000).....8

Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 637 (Sept. 2002)8

NAMI Ohio, *To Lift the Burden: Reducing the Costs of Untreated Mental Illness in Ohio While Improving Care* (April 2005)9

Ohio Coalition for the Education of Children with Disabilities, *Students with Disabilities Over-represented in Juvenile Justice System: Does Disability = Delinquency?*, Vol. XXII, Issue 4 (Nov-Dec.2004).....9,10

Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems (2004)18

The Challenge of Crime in a Free Society” Report by the President’s Commission on Law enforcement and Administration of Justice (1967).....20

Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents and Adults Capacities as Trial Defendants*, LAW AND HUMAN BEHAVIOR Vol. 27. No. 4 (Aug. 2003).....8,9

Youth in the Criminal Justice System Guidelines (Feb. 2002); accessed at <http://www.abanet.org/crimjust/juvjus/jjppolicies.html#guidelines> on December 11, 2006)18

STATEMENT OF THE INTEREST OF AMICI CURIAE

Amici Curiae are the Children's Law Center, Inc.; the American Civil Liberties Union of Ohio (ACLU of Ohio); the National American Civil Liberties Union, Racial Fairness Program; Children's Defense Fund Ohio (CDF); the Franklin County Public Defender; the Juvenile Justice Advocacy Alliance; the Juvenile Justice Coalition; the Montgomery County Public Defender; Voices for Ohio's Children, Alternatives for Youth, and the National Association of Counsel for Children.

The Children's Law Center, Inc. has as its mission to protect the rights of children in Ohio and Kentucky through legal representation, research and policy development, and training and education of attorneys and others regarding the rights of children. The Center previously released a report in March of 2003 entitled "Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio." The Center strives to ensure that youth receive the due process protections to which they are entitled, and seeks to enhance the capacity of the public defender programs designed to ensure that the right to counsel is protected and that children receive effective assistance of counsel at all critical stages.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit and nonpartisan organization with over 450,000 members. It is the oldest and largest organization dedicated to the protection of civil liberties as embodied in the United States Constitution and the Bill of Rights. The ACLU frequently appears in court both as direct counsel and as amicus curiae.

The American Civil Liberties Union of Ohio, with over 25,000 members and supporters, is the Ohio affiliate of the ACLU. It, too, frequently appears in court as direct counsel and as amicus in support of principles of fairness, due process, and fundamental liberty set forth in the federal Constitution and also in the Ohio Constitution.

The Children's Defense Fund has as its mission to Leave No Child Behind and to ensure every child has a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective voice for children of American who cannot vote, lobby or speak for themselves, especially those who are poor, minority or those with disabilities. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations.

The Franklin County Public Defender is a county operated public defender program which provides comprehensive legal representation services in criminal, juvenile, and custody proceedings to indigent persons in Franklin County so as to fulfill the constitutional mandate of "equal justice under the law."

The Juvenile Justice Advocacy Alliance is an independent group of predominately youth-serving professionals and concerned citizens in Cuyahoga County. The mission is to promote and advocate for the delivery of effective, humane and just services and policies for youth involved in the juvenile justice system in Cuyahoga County and beyond, as the best way to serve the safety and well-being of youth and the public.

The Juvenile Justice Coalition, an Ohio non-profit membership organization, has as its mission to promote effective programs, equitable treatment of youth, and public policy that will reduce juvenile delinquency in Ohio. JJC has focused on two policy areas: encouraging community-based alternatives to institutionalization, and reducing minority overrepresentation in the juvenile justice system.

The Montgomery County Public Defender operates to defend citizens who are accused of a criminal offense and who are at risk for going to jail. This includes felonies, misdemeanors,

preliminary hearings, extraditions, and juvenile delinquency.

Voices for Ohio's Children is a non-partisan group of public, not-for-profit and private sector organizations who share a mutual concern about the present and future: children.

Through a collaborative effort and a collective voice, Voices for Children promotes improvements in the well being of the community's children.

Alternatives for Youth (AFY) is a non-profit organization who's mission is to empower children involved with the juvenile justice system to remain in the community by providing them with timely and effective advocacy, guidance, support, links to community services and access to quality legal representation. Alternatives for Youth is committed to improving the access to and quality of legal representation received by youth involved in the juvenile justice system and has implemented several of the recommendation made in the study, "Justice Cut Short." Currently, Alternatives for Youth provides assistance and support to defense attorneys, continuing legal education training, and community outreach education designed to provide the general public with information about the juvenile justice system, the rights of youth involved in the system, and the importance of ensuring that all youth invoke their right to counsel.

Founded in 1977, the National Association of Counsel for Children (NACC) is a 501 (c) (3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and interests of children. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office program, policy advocacy, and the amicus curiae program. Through the amicus curiae program,

the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as amicus curiae. Amicus cases must past staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 2000 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

This case presents important questions regarding the application of fairness, due process, and fundamental liberty set forth in the federal Constitution and also in the Ohio Constitution. The amici collectively have a vast range of expertise in addressing these protections which we believe the court will find useful. As such, the amici offer this brief in support of appellant's position pursuant to S.Ct. Prac. R. VI, Section 5. None of these organizations has any relationship to the individuals involved in this litigation.

STATEMENT OF THE CASE AND FACTS

Amici Curiae hereby adopt the Statement of Case and Facts set forth in the Memorandum of the Petitioner. Amici address only Petitioner's Second Proposition of Law, and pose its own Proposition of Law as discussed below.

ARGUMENT

Petitioner's Second Proposition of Law

Waiver of Counsel by Children Should be Permitted only Upon Strict Compliance with Constitutional Safeguards that can Ensure that Waiver is Knowing, Intelligent and Voluntary, and Thus Comports with the Due Process Requirements of the Fifth and Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution.

In a series of cases decided nearly forty years ago, the United States Supreme Court recognized that juveniles facing delinquency proceedings are entitled to be treated fairly given the adversarial nature of those proceedings. The guiding principle of these cases is that juveniles often require the same fundamental procedural safeguards as adults. Like adults in criminal cases, juveniles in delinquency matters must often argue against detention, challenge facts presented by the state, confront witnesses and take other positions that are adversarial to the state's interests. Recognizing that the Constitution requires fundamental fairness in delinquency proceedings, the Court held that due process rights guaranteed in the Constitution were applicable to juvenile court proceedings in certain contexts, including the right to the assistance of counsel in preparing and submitting a defense. See *Kent v United States*, 383 U.S. 541 (1966) (holding that juvenile hearings must "measure up to the essentials of due process and fair treatment"); *In re Gault*, 387 U.S. 1 (1967) (the Fourteenth Amendment requires a right to counsel in delinquency proceedings); *In re Winship*, 397 U.S. 358 (1970) (proof beyond a reasonable doubt is the required standard in delinquency proceedings); and *Breed v. Jones*, 421

U.S. 519 (1975) (adjudication in Juvenile Court puts youth in jeopardy for purposes of the Double Jeopardy Clause).

In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court recognized the applicability of the Fourteenth Amendment's Due Process Clause to juveniles in delinquency proceedings. The Court held that, in adjudicatory stage of the delinquency proceeding, a juvenile had the right to counsel, among other due process rights. The Court noted that the "juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him'" Id. at 36, quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

In cases following *Gault*, many courts, including Ohio courts, have adhered to the notion that juveniles should have largely the same protections as adults in stages of the proceedings that extend beyond those considered by the Court in *Gault*. See, e.g., *In re Doyle* (1997), 2nd Dist., 122 Ohio App. 3d 767 (referring to *Gault* as finding that "there is no material difference with respect to the constitutional right to counsel between adult and juvenile proceedings"). Also see *John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992).

Because the due process requirement of the right to counsel in the juvenile context is the very bedrock of our constitutional principles, cases addressing the standards for constitutionally-valid waivers of that right require courts reviewing waivers to make a complete and searching inquiry into the facts and circumstances surrounding the competency of the person articulating the waiver and whether the waiver itself was made knowingly and voluntarily. The jurisprudence with respect to constitutionally valid waivers of the right to counsel initially arose in the adult Sixth Amendment context. In those cases, and as the underlying principles have been

extended to juveniles, courts have consistently articulated not only a strong presumption against waiver, but also high standard by which courts must judge whether individual waivers, once articulated, are constitutionally sound.

The Supreme Court has stated, “A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

Where a person convicted in state court has not intelligently and understandingly waived the benefit of counsel and where the circumstances show that his rights could not have been fairly protected without counsel, the Due Process Clause invalidates his conviction. *Moore v. Michigan*, 355 U.S. 155, 161 (1957).

Ohio courts have found that the adult, federal standard of waiver of the right to counsel applies to juveniles in the state, requiring that waiver must be voluntary, knowing and intelligent. See *State v. Gibson* (1976), 45 Ohio St. 2d 366, *In re Nation* (1989), 61 Ohio App. 3d 763, and *In re Johnston* (2001), 142 Ohio App.3d 314. Similarly, Ohio courts have ruled that the record must reflect the waiver. *In re Solis* (1997), 124 Ohio App. 3d 547 (case reversed and remanded where there was journal entry of a waiver but no record of respondent’s voluntary, intelligent waiver at dispositional hearings, even though he had an attorney for his adjudication hearing).

In 1996 Ohio amended Juv.R. 37 to require a transcript of all juvenile proceedings, after an appellate court found that a short journal entry was sufficient to establish a waiver of counsel. *In re East* (1995), 105 Ohio App. 3d 221, 663 N.E. 2d 983. Ohio requires that more attention be given to juveniles than adults, in regard to voluntariness and understanding, *Ohio v. Davis* (1978), 56 Ohio St. 2d 51, 54, and to scrutinize waiver more in juvenile than adult cases. See e.g. *In re Johnston* (2001), 11th Dist., 142 Ohio App. 3d 314.

A growing body of social science research has emerged to further support the proposition that children have less knowledge and experience to aid them in legal understanding and decision making, and as a result need greater protection to preserve their constitutional and other legal rights. Research indicates that “[c]hildren and adolescents are developmentally different from adults, and those developmental differences need to be taken into account at all stages and in all aspects of the justice system, and most particularly, in the provision of counsel.” Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 637 (Sept. 2002). Due to these developmental differences, the Supreme Court has explained that the “status of minors under the law is unique.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979). “In situations where adults see several choices, adolescents may see only one.” Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 CRIM. JUST. 26, 27 (Summer 2000).

Other studies indicate that children, particularly children in the juvenile justice system, are less likely than adults to appreciate the consequences of the decisions they make in court. For example, one recent study by Thomas Grisso, a leading authority on the ability of children to waive the right to counsel, examined the legal decision-making processes for court-involved children. Researchers orally presented a group of 98 court-involved children from the ages of 9 – 17 with 36 commonly used legal words and phrases from a Massachusetts plea form and asked each child whether they thought they knew them. If so, they were asked to define the word. Even educated and experienced children failed to correctly define 86% of the legal terms, none of the children could correctly define “disposition,” and only three could define words such as “plea” and “waiver.” Only seven correctly defined “counsel” (lawyer), and only nine correctly defined the word “right.” Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A*

Comparison of Adolescents and Adults Capacities as Trial Defendants, LAW AND HUMAN BEHAVIOR Vol. 27. No. 4 (Aug. 2003) at 333-363. The study concluded that adolescents “are more likely than young adults to make choices that reflect a propensity to comply with authority figures,” and less likely or less able to recognize risks inherent in their choices. Id. at 333-63.

In the same study, it was discovered that juveniles aged 14 and under “demonstrate incompetence to waive their rights to silence and legal counsel as do 15 and 16 year olds who have IQ scores of 80 or below.” Of those who have higher IQ scores, up to one half lack the requisite competence to waive their rights. Juveniles with below average intelligence are more likely than others to be impaired in abilities relevant to legal decision making. This risk is amplified in the juvenile justice system because a high proportion of youths are of below-average intelligence. Id. at 333-63. Grisso also recommended that older juveniles should be prohibited from waiving counsel. Id. Based on their findings, Grisso and Scott recommend a per se exclusionary rule for all juvenile waivers. Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 172-173 (1997).

The demographics of children in Ohio’s juvenile justice system suggest that, like their counterparts nationally, they cannot effectively navigate the complex and adversarial juvenile justice system on their own. For example, roughly 75% of incarcerated youth need mental health services. NAMI Ohio, *To Lift the Burden: Reducing the Costs of Untreated Mental Illness in Ohio While Improving Care* (April 2005) at 3-4. At least 44% of youth committed to the Ohio Department of Youth Services have special education needs, as compared to 14% of children in the general Ohio school population, and 10% of children nationally. Ohio Coalition for the Education of Children with Disabilities, *Students with Disabilities Over-represented in Juvenile*

Justice System: Does Disability = Delinquency?, Vol. XXII, Issue 4 (Nov-Dec.2004) at 1.

Nearly half of these youth are emotionally disturbed, while roughly 24% have a specific learning disability and 22% have cognitive disabilities. *Id.* at 2.

Courts should permit a child to waive his right to counsel only if the child is in the presence of counsel at the time of the waiver, and prior to the waiver, has consulted with counsel about the role counsel can play in a juvenile delinquency proceeding, and only if a determination is first made that the waiver is knowing, intelligent and voluntary. In determining knowing, intelligent and voluntary, the court should consider and place specific written findings in the record with respect to whether or not the child fully comprehends:

- 1) the nature of the allegations and the proceedings and range of possible dispositions;
- 2) the right to assistance of counsel without charge if the family is financially unable to obtain counsel;
- 3) that even if the child intends not to contest the charge, counsel may be of substantial assistance in developing and presenting materials that could effect the disposition;
- 4) the child's right to obtain counsel at any stage of the proceedings; and
- 5) that the child's rights at any hearing include the right to call witness on the child's behalf, offer evidence on the child's behalf; cross examine witnesses; obtain witnesses by compulsory process, and require proof beyond a reasonable doubt in juvenile delinquency proceedings.

The facts in this case clearly show that Corey had an unrealistic perception of what would happen as a result of waiving his right to counsel and proceeding to disposition. The record shows that Corey's motivation was to be placed in the same correctional facility as his older brother. It seems apparent that Corey did not fully appreciate the magnitude and consequences of his waiver of counsel and subsequent admission to the charges. The Due Process Clause of the Fourteenth Amendment requires that the waiver of counsel and other rights by Corey be knowing, intelligent and voluntarily made, and that such findings be made on the record. Because adolescents like Corey are less likely than adults to appreciate the consequences of their decisions, and they need greater protection than their adult counterparts, this Court should find

that Petitioner's waiver of counsel was not made in a knowing, intelligent and voluntary manner, and as such, his right to Due Process of Law as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution, has been violated.

Proposition of Law of Amici Curiae

A Majority of Other States has Taken Steps to Ensure Meaningful Access to Counsel by Restricting Waiver through Statutory Provisions and/or Case Law; Further Support for Restricting Waiver is Found in the Positions of Several National Organizations.

Since the 1967 decision in *Gault*, many state legislatures and state courts have addressed the right to counsel issue for youth in delinquency proceedings, and in general have moved in the direction of providing greater protection to safeguard this right. A majority of states makes it difficult, if not impossible, for juveniles to waive the right to an attorney in delinquency proceedings, and provide clear standards regarding the waiver of counsel. Mirroring this trend, a number of national trade organizations, including the National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Bar Association, strongly disfavor waiver of counsel by juvenile defendants. Thus, by adopting a clear, explicit standard for trial judges to follow in reviewing waiver of counsel, this Court would be adopting a majority viewpoint in the protection of the rights of juvenile defendants.

Ohio Rules and statutes, as well as judicial practices regarding waiver of counsel afford less protection to children than the majority of states that have recognized the many problems associated with allowing a juvenile to waive their right to counsel. Currently, Ohio prohibits the waiver of counsel only where the court is considering relinquishing jurisdiction for purposes of criminal prosecution. Juv.R. 3.

**a) Many States Restrict Waiver of Counsel by Statutory Provisions
Requiring Additional Procedural Safeguards**

In recent years, there has been a clear national trend by legislatures to ensure that children have meaningful access to counsel and are able to make informed decisions about their legal representation. While a few states prohibit the waiver of counsel in any circumstances, many restrict waiver based upon a specified age of the child, and/or provide other procedural safeguards before waiver can occur, such as parental consent.

At least four states have enacted legislation that expressly prohibits a juvenile from waiving their right to counsel at any stage of their proceedings, under any circumstances.¹ For instance, a New Mexico statute states that the court must advise the child and the child's parent, guardian, or custodian "that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition," requiring the court to appoint counsel if such counsel is not retained. NMSA §32A-2-14(H). Using similar mandatory language, North Carolina's statute states, "Counsel for the juvenile shall be appointed . . . unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined." NCGSA §7B-2000(a). Oklahoma law also utilizes such mandatory language to prohibit juvenile waiver of counsel. See 10 Okl. St. Ann. §7303-3.1 and 10 Okl. St. Ann. §24.

The state of Iowa also expressly prohibits juvenile waiver of the right to counsel, and enumerates each type of proceeding for which counsel is required. I.C.A. §232.11. The statute recognizes the juvenile right to counsel in the following enumerated proceedings: police custody and questioning, detention or shelter care hearings, waiver hearings, adjudicatory hearings,

¹ These states include Iowa (I.C.A. §232.11), New Mexico (NMSA §32A-2-14(H)), North Carolina (NCGSA §7B-2000), and Oklahoma (§7303.31; §10-24(A)(1)).

dispositional hearings, and dispositional order review or modification hearings. I.C.A § 232.11(1)(a)-(f). The statute then states that this “right to be represented by counsel . . . shall not be waived by a child of any age” in all of the aforementioned proceedings except the one regarding police custody and questioning. I.C.A § 232.11(2). And, even though waiver is permitted in the case of police custody and questioning, it is limited to juveniles aged 16 years and older and requires written consent to waiver by the juvenile’s parent, guardian, or custodian. I.C.A § 232.11(2).

Fifteen states protect a child’s right to counsel by mandating specific guidelines for waiver.² Such protections include permitting waiver to occur only in the presence of and after consultation with counsel (Indiana), requiring the presence of a parent or guardian possessing an understanding of the consequences of waiver (Colorado), and prohibiting waiver for juveniles not found to be competent (New Jersey). Some states have also implemented restrictions on waiver based on the age of the juvenile, with, as examples, Washington permitting waiver for 12 year old juveniles, Vermont for 13 year olds, Utah for 14 year olds, and Wisconsin for 15 year olds.³ These statutory safeguards are extremely important because children who forgo counsel are more likely to admit to the charges against them, even though they may be innocent or have meritorious defenses. More recently, Pennsylvania has taken the important step of prohibiting a

² This includes Colorado (J.F.C. 660 P.2d 7), Connecticut (*In re Manual*, 543 A.2d 719 (1988)), Indiana (IC 31-32-5-1(1)-(3)), Kansas (Attorney General of Kansas NO 94-53), Kentucky (KRS §610.060(2)(b)), Louisiana (LCC Art. 810(A)(1)-(3)), Massachusetts (*Commonwealth v. Wertheimer*, 472 N.E. 2d, 266), Maryland (MD Code §3-8A-20(b)(3)-(4) and Rule 11-106(b)), Montana (MT ST 41-5-1413), New Jersey (N.J.S.A. 2A:4A-39(b)(1)(2)), North Carolina (NCJC §7B-2000), Oklahoma (OK Statute §10-24(A)(1)), Vermont (VT R FAM P Rule 6(d)(3)(A)-(D)), Virginia (Va. Code Ann. §16.1-266(c)(3)), and Wyoming (W.S. 14-6-222).

³ This includes Utah (Utah R. Juv. P. Rule 26(e)), Vermont (VT R. Fam. P. Rule 6(d)(4)), Washington (RCWA 13.40.140(10)), and Wisconsin (W.S.A. 938.23(1m)(a)).

juvenile's parent from waiving the child's right to counsel without proper consultation with an attorney.⁴

The trend for prohibiting juvenile waiver of counsel shows no sign of slowing. Last year in 2005, at least nine (9) state legislatures introduced new juvenile waiver bills affording greater protection to children.⁵ To date in 2006, at least five states have introduced such bills.⁶

b) Overwhelmingly, State Courts since *Gault* have Overturned Cases Involving Waiver of Counsel by Youth Defendants

State courts have also overwhelmingly accepted the proposition that juvenile defendants must have meaningful access to counsel. An examination of reported case law since the *Gault* decision indicates that one-hundred thirty-two (132) appellate decisions have addressed the issue of waiver of the right to counsel by juvenile defendants. Of these decisions, one-hundred ten (110) overturned the waiver.⁷ Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 609 (2002).

⁴ 42 Pa C.S.A. §6337

⁵ See, for example, Arizona (HB 2614), Connecticut (HB 6360), Florida (SB 1218), Georgia (SB 135), Illinois (SB 1953), Nebraska (LB 112), Texas (SB 662), Vermont (HB 306), and Virginia (HB 2670).

⁶ This includes Florida (SB 526, HB 529), Illinois (HB 166, SB 1952), Indiana (SB 357), Washington state (HB 1531, HB 1644, HB 2343), and Mississippi (HB 199).

⁷ See Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 Florida Law Review 577, 609 (2002), but note that the 99 appellate cases cited in this article follow *In re Gault* and continue through September 2001. An update of that research found another 33 appellate cases, with 29 overturning waiver and 4 affirming waiver. Reported cases decided since the end of the law review research and continuing through March 2006, in reverse chronological order, are as follows: *In re J-M.W.*, 9th Dist., 2006-Ohio-6156 (upheld on procedural grounds without examining whether waiver was proper); *In re S.J.*, 9th Dist., 2006-Ohio-4467; *In re C.A.C.*, 2nd Dist., WL 2219570 (Aug. 4, 2006); *S.H. v. State* (2006), Fla. App. 1st Dist., 933 So.2d 1250; *In re B.M.S.*, 165 Ohio App. 3d 609, 2006-Ohio-981; *In re R.B.*, 2nd Dist., 2006-Ohio-264; *C.V. v. State* (2005), Fla. App. 2nd Dist., 915 So. 2d 664.; *C.K. v. State* (2005), Fla. App. 2nd Dist., 909 So. 2d 602; *In re William B.*, 6th Dist., 163 Ohio App. 3d 201, 2005-Ohio-4428, 837 N.E.2d 414; *T.H. v. State* (2005), Fla. App. 2nd Dist., 899 So. 2d 504.; *J.R.I. v. State* (2005), Fla. App. 1st Dist., 898 So. 2d 1093; *K.E.N. v. State* (2005), Fla. App. 5th Dist., 892 So.2d 1176; *In re Estes*, 4th Dist., 2004-Ohio-5163, WL 2260510; *D.K. v. State*, Fla.

The data also indicated that Ohio courts were responsible for fifty-five (55) of these appeals, overturning waiver in thirty-eight (38), and affirming waiver in seventeen (17). *Id.* 656, 659, and 661-62. The only other state that compared to the number of cases in Ohio was Florida, which was responsible for thirty-eight (38) appeals; all thirty-eight (38) resulted in the waivers being overturned. *Id.* at 651-54.

In spite of the large number of reversals, however, appellate courts in Ohio have not devised a clear standard to guide trial court judges in evaluating whether the juvenile knowingly, voluntarily, and intelligently waived the right to counsel. Some appellate courts have provided a list of specific steps that must be taken in order for waiver to be valid, requiring that the trial judge inform the juvenile individually of the nature of the charges, the range of allowable punishment, the available defenses and mitigating factors, and all other facts necessary for the juvenile to fully understand the entire proceeding. See, e.g., *In re Manns*, 9th Dist., 2002-Ohio-85, WL 22879, and *In re Styer*, 3rd Dist., 2002-Ohio-6273, WL 31555992. Another court required the judge to engage the juvenile in a “meaningful dialogue,” *In re Vaughters*, 8th Dist., 2002-Ohio-5843, WL 31401623, while another invalidated waiver after finding that the trial court did not “substantially comply” with Rules 29(B)(3) and 29(B)(5). *In re Bays*, 2nd Dist., 2003-Ohio-1256, WL 1193787, ¶10. Even courts that have affirmed the waiver of counsel did

App. 4th Dist., 881 So. 2d 50; *In re Kindred*, 5th Dist., 2004-Ohio-3647, WL 1534135; *In re Christopher H.* (2004), 359 S.C. 161, 596 S.E.2d 500; *In re Amos*, 3rd Dist., 154 Ohio App. 3d 434, 2003-Ohio-5014, 797 N.E.2d 568; *N.M. v. State* (2003), Ind. App., 791 N.E.2d 802; *A.L. v. State* (2003), Fla. App. 4th Dist., 841 So. 2d 676; *In re Bays*, 2nd Dist., 2003-Ohio-1256, WL 1193787; *In re Styer*, 3rd Dist., 2002-Ohio-6273, WL 31555992; *In re Vaughters*, 8th Dist., 2002-Ohio-5843, WL 31401623; *In re Husk*, 4th Dist., 2002-Ohio-4000, WL 1803698; *In re Stanford*, 9th Dist., 2002-Ohio-3755, WL 1627917; *M.Q. v. State* (2002), Fla. App. 5th Dist., 818 So. 2d 615; *In re Ratliff*, 12th Dist., 2002-Ohio-2070, WL 745370; *State v. Riggins* (2002), 180 Or. App. 525, 44 P.3d 615; *In re Kash*, 12th Dist., 2002-Ohio-1425, WL 471178; *State v. B.P.* (2002), Fla., 810 So. 2d 918; *State v. Rodriguez* (2002), 274 Ga. 728, 559 S.E.2d 435, 2 FCDR 365; *In re Manns*, 9th Dist., 2002-Ohio-85, WL 22879; *State v. T.G.* (2001), Fla., 800 So. 2d 204; *D.R. v. Commonwealth* (2001), Ky. App., 64 S.W.3d 292.

not supply a workable standard, with one court merely stating, without further discussion, that the trial court had conducted a “comprehensive inquiry.” See *In re Stanford*, 9th Dist., 2002-Ohio-3755, WL 1627917, ¶17.

The most helpful example found in Ohio decisions comes from the Seventh District Court of Appeals. That court reviewed a waiver of counsel case in which the trial court permitted waiver after performing a limited colloquy and obtaining signatures on a waiver form with boilerplate language. *In re Royal* (1999), 132 Ohio App. 3d 496, 505, 725 N.E.2d 685, 691. Overturning the waiver and subsequent admission, the court emphasized that the “rights dialogue of Juv.R. 29(B) is mandatory . . . [and] the court has a duty to make an inquiry to determine that the relinquishment is . . . voluntarily, knowingly, and intelligently made.” *Id.* at 503, 690. Furthermore, while noting that the trial court needs only to substantially comply with Juv.R. 29(D) when evaluating admissions, the court stated that the trial court must comply with the mandatory provisions of Rule 29(B) by conducting a thorough investigation that includes information regarding the nature of the offense, available punishments, defenses, and mitigating circumstances, and other essential facts, as well as an inquiry regarding the juvenile’s age, education, mental capacity, and prior criminal experience. *Id.*

Florida courts have also consistently reversed waiver, requiring trial judges to adhere strictly to the statutory language governing waiver of counsel found in Fla. R. Juv. P Rule 8.165(b). Florida courts have interpreted the statute governing juvenile waiver of counsel as requiring the judge to inform the juvenile of benefits lost by and danger/disadvantages of representing himself, to determine if waiver was made voluntarily and intelligently, and to determine whether any unusual circumstances would preclude the juvenile from exercising waiver. See *C.K. v. State* (2005), 2nd Dist., 909 So. 2d 602, 604. In addition to failing to conduct

such a thorough inquiry, trial judge's allowance of waiver also has been overturned in situations where the judge failed to comply with specific provisions of the Florida rule, such as the requirement of offering counsel at every stage of the proceeding even if the juvenile had previously waived counsel. *Id.* at 604. Finally, while Florida courts generally reiterate all, or at least part of, the rule regarding waiver of counsel, *K.E.N. v. State* (2005), 5th Dist., 892 So. 2d 1176, 1178-79, courts also "emphatically pointed out that Rule 8.165 is not merely procedural," noting that the "inquiry is not an annoying perfunctory task . . . [and] is not to be rushed through." *Id.* at 1179. Thus, Florida courts have used their large number of appeals to state firmly and consistently the standard that trial judges must apply in order for juvenile waiver of counsel to be valid.

Other state courts that have reviewed juvenile waiver of counsel have also provided a comprehensive standard for trial judges to follow. The Kentucky Court of Appeals, for example, interpreted its statute on juvenile waiver of counsel as permitting waiver only after the court has appointed counsel and the juvenile has consulted with that counsel regarding the issue of waiver. *D.R. v. Commonwealth* (2001), Ky. App., 64 S.W.3d 292, 296-97. South Carolina courts, while having no statute on juvenile waiver, extended similar protections to juvenile defendants by allowing waiver only after the trial judge has advised the juvenile of his right to counsel, warned the juvenile adequately of the dangers of self-representation, and conducted an inquiry made up of ten factors, including the defendant's age and education, previous involvement in criminal trials, previous, if any, consultation with counsel regarding waiver, possible defenses, and knowledge of the nature of the charges, among others. *In re Christopher H.* (2004), 359 S.C. 161, 167-68, 596 S.E.2d 500, 503-04. Ohio courts should follow the lead of these states, as well as others, in promulgating a clear, comprehensive standard governing juvenile waiver of counsel.

c) There is Increasingly Strong Support from National Trade Organizations, Including those of Juvenile Court Judges, that Waiver of Counsel by Youth Should be Permitted Rarely, if at all

Several nationally recognized organizations have addressed the issue of juvenile waiver of counsel through standards or other policies regarding indigent defense services. In keeping with the trend of placing significant restrictions on waiver of counsel, these sources generally disfavor waiver except under extraordinary circumstances, if at all.

As early as 1980, the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) included in their Juvenile Justice Standards a provision for a system of mandatory counsel, stating, “A juvenile’s right to counsel may not be waived.” *Juvenile Justice Standards: Pretrial Court Proceedings*, 6.1(A). More recently, the ABA supported a restricted system of juvenile waiver in which “youth should not be permitted to waive the right to counsel without consultation with a lawyer and without a full inquiry into the youth’s comprehension of the right and their capacity to make the choice intelligently, voluntarily, and understandingly.” In such cases, the ABA guidelines suggest that the court should appoint stand-by counsel. *Youth in the Criminal Justice System Guidelines* (Feb. 2002); accessed at <http://www.abanet.org/crimjust/juvjus/jjpolicies.html#guidelines> on December 11, 2006).

The American Council of Chief Defenders and the National Juvenile Defender Center also advocate against the practice of allowing juveniles to waive their right to counsel. In 2004, these two organizations established and adopted the *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* with the goal of providing “criteria by which an indigent defense system may fully implement the holding of *In Re: Gault*.” *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2004) at Preamble(A). Dedicating the first principle to the

juvenile’s right to counsel, these organizations stated, “The indigent defense delivery system should ensure that children do not waive appointment of counsel.” *Id.* at Principle 1(A).

Furthermore, counsel should be appointed at the earliest stage of the proceeding and should guide the juvenile through the entire process, including “detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.” *Id.* at 1(B).

In 2005, the National Council of Juvenile and Family Court Judges (NCJFCJ) published a set of guidelines intended to improve practice in the juvenile court system. *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005) at 15.

Development of the Guidelines was funded by a grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in 2001, and included a diverse group of nationally recognized experts. This diverse group met for three years of “discussion, debate and hard work . . . to generate a tool for jurisdictions nationwide that could improve daily practice and better serve the communities and youth on their watch.” *Id.* at 10.

The Guidelines stress the important role of the judiciary in effecting change and progress within the juvenile court system. NCJFCJ calls upon the judiciary to complement its judicial functions with leadership that draws upon “the perspectives and experiences of system stakeholders . . . [and] encourages and facilitates the emergence of a new vision—a vision of an ‘ideal system’ that is significantly more desirable than the current system and one that cannot be approached without a fundamental shift in philosophy and organizational practice.” *Id.* at 204. The guidelines note that “[j]uvenile delinquency court judges should be extremely reluctant to allow a youth to waive the right to counsel.” *Id.* at 25. Furthermore, in “the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the

youth is fully informed of the consequences . . . [and that] the youth has consulted with an attorney about the decision and continues to desire to waive the right.” Id.

Nearly forty years have passed since the Supreme Court recognized that in many instances, juvenile courts send youth to institutions where their world becomes “a building with whitewashed walls, regimented routine and institutional hours. . . . Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and ‘delinquents’ confined with him for anything from waywardness to rape and homicide.” *In re Gault*, 387 U.S. at 27 (1967). It would therefore be extraordinary, the Court noted, “if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase ‘due process.’” Id. Drawing in large part from the comments and recommendations of the President’s Commission on Law Enforcement and Administration of Justice, the Court cited the Commission’s comment that “. . . [n]o single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires.” Id. at 39, citing to “*The Challenge of Crime in a Free Society*,” Report by the President’s Commission on Law enforcement and Administration of Justice (1967).

Gault recognizes that most basic concept that other rights afforded to an accused have substantial meaning for juveniles “only if they are afforded with competent lawyers who can invoke those rights effectively.” Id. It follows, therefore, that allowing youth to waive their right to counsel undermines the very heart of the *Gault* decision by weakening the procedural cornerstone it established.

CONCLUSION

Further review of the Judgment of the Licking County Court of Appeals, Fifth Appellate District is warranted. As such, this Court should adopt the two propositions of law as stated here by amici.

Respectfully submitted,

Kim Brooks Tandy / by Jie Beiler
Kim Brooks Tandy (#0076173) #0069459
Children's Law Center, Inc.
104 East 7th Street
Covington, Kentucky 41011
859-431-3313
Fax: 859-655-7553
kimbrooks@fuse.net

Jeffrey M. Gamso / by Jie Beiler
Jeffrey M. Gamso (#0043869) #0069459
ACLU of Ohio Foundation
American Civil Liberties Union
4506 Chester Avenue
Cleveland, Ohio 44103-3621
216-472-2220
Fax: 216-472-2210
jmgamso@acluohio.org
COUNSEL FOR AMICI ACLU OF OHIO AND AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Yeura R. Venters / by Jie Beiler
Yeura R. Venters (#0014879) #0069459
Franklin County Public Defender
373 S. High St., 12th Fl
Columbus, Ohio 43215
614-719-8877
Cell: 614-330-5800
yrventer@franklincountyohio.gov
COUNSEL FOR AMICUS, FRANKLIN COUNTY PUBLIC DEFENDER

Kay Locke / by Jie Beiler
Kay Locke (#0014049) #0069459
Montgomery County Public Defender
117 South Main Street, Fourth Floor
Dayton, Ohio 45422

937-225-5434

lockek@mcOhio.org

COUNSEL FOR AMICUS MONTGOMERY COUNTY PUBLIC DEFENDER

Emily Hagan / by Joe Buler

Emily Hagan (#0080667)

#0069459

Voices for Ohio's Children

4019 Prospect Avenue

Cleveland, OH 44103

216-881-7860

emily@voicesforclevelandschildren.org

COUNSEL FOR AMICUS VOICES FOR OHIO'S CHILDREN

Jeffrey M. Gamso / by Joe Buler

Jeffrey M. Gamso (#0043869)

#0069459

Children's Defense Fund

395 E. Broad Street

Suite #300

Columbus, Ohio 43215

614-221-2244

COUNSEL FOR AMICUS CHILDREN'S DEFENSE FUND

Emily Hagan / by Joe Buler

Emily Hagan (#0080667)

#0069459

Juvenile Justice Coalition

P.O. Box 477

Bath, Ohio 44210-0477

330-666-8596 (phone/fax)

emily@voicesforclevelandschildren.org

COUNSEL FOR AMICUS JUVENILE JUSTICE COALITION

Linda Julian / by Joe Buler

Linda Julian (#0056195)

#0069459

Juvenile Justice Advocacy Alliance

1849 Prospect Ave.

3rd Floor

Cleveland, Ohio 44115

216-621-3898

attorneyjulian@aol.com

COUNSEL FOR AMICUS JUVENILE JUSTICE ADVOCACY ALLIANCE

Linda Julian / by Joe Buler

Linda Julian (#0056195)

#0069459

Alternatives for Youth

1849 Prospect Ave.

3rd Floor

Cleveland, Ohio 44115
216-621-3898
attorneyjulian@aol.com
COUNSEL FOR AMICUS ALTERNATIVES FOR YOUTH

Jeffrey M. Gamso / by Joe Belem
Jeffrey M. Gamso (#0043869) #0069459
National Association of Counsel for Children
1825 Marion Street, Suite 242
Denver, Colorado 80218
303-864-5323

<http://www.NACCchildlaw.org>
COUNSEL FOR AMICUS NATIONAL ASSOCIATION OF COUNSEL FOR
CHILDREN

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing document has been served upon the following
person, by regular U.S. mail on this 26th day of December, 2006:

Amanda J. Powell
Assistant Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215

Erin Welch
Assistant Licking County Prosecutor
20 South Second Street
Newark, Ohio 43055

Kim Brooks Tandy / by Joe Belem
Kim Brooks Tandy (#0076143) #0069459
Children's Law Center, Inc.
104 East 7th Street
Covington, Kentucky 41011
859-431-3313