In the Supreme Court of Appeals of West Virginia

State of West Virginia,
Respondent

v.

Supreme Court No.: 15-0021
(Case No. 14-F-13)

Stephanie Elaine Louk,
Petitioner.

BRIEF OF AMICI CURIAE WEST VIRGINIA STATE MEDICAL ASSOCIATION, WEST VIRGINIA PERINATAL PARTNERSHIP, AND OTHER EXPERTS IN MATERNAL AND CHILD HEALTH AND DRUG TREATMENT IN SUPPORT OF PETITIONER STEPHANIE LOUK

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INTERESTS OF AMICI

Amici curiae[1] include West Virginia, national, and international organizations and individuals with recognized expertise in the areas of maternal and child health, and in understanding the effects of drug use on users, their families, and society. They have moved the Court for leave to file this brief because they seek to bring attention to the medical and public health research that exposes the danger that arises from prosecutions like the one at issue here.

Each amicus curiae is committed to reducing potential drug-related harms to women, children, and families at every opportunity. Thus, amici do not endorse the non-medicinal use of drugs, including alcohol or tobacco, during pregnancy; nor do they contend that there are no health risks associated with the use of controlled substances during pregnancy. But this prosecution, and the lower court's erroneous interpretation of the statute under which it was brought, creates grave medical and public health hazards by driving women away from prenatal care and drug treatment. This case therefore presents a question of monumental importance to the health and wellbeing of West Virginia women and families.

SUMMARY OF THE ARGUMENT

For what appears to be the first time in West Virginia history, a trial court convicted and sentenced a woman to up to fifteen years in prison for Child Neglect Resulting in Death under W.Va. Code § 61-8D-4a with no allegation that she committed an act of neglect on a born-alive child. Rather, the charge was based on the Petitioner, Stephanie Louk, having given birth via emergency cesarean surgery during a nearly fatal cardiorespiratory episode to a baby who lived for 11 days. In denying Ms. Louk's motion to dismiss and permitting this charge to be applied to a

[1] No counsel for a party to this case authored this brief in whole or in part, and no counsel for a party or any entity other than amici curiae has made any monetary contribution intended to fund the preparation or submission of the brief. Statements of interest for each amicus are included as Annex A.

pregnant woman who suffered a health issue, the trial court improperly expanded W.Va. Code § 61-8D-4a. According to the ruling of the Circuit Court, this law permits arrest and punishment of any pregnant woman who suffers an adverse outcome believed by law enforcement to have been caused by an act or omission during pregnancy.

The devastation caused by her incarceration is not limited to Ms. Louk and her family (including the child that she gave birth to after her loss). As amici will demonstrate, prosecutions like this one present grave risk to public health. Criminal punishment for health issues that may arise from continuing a pregnancy to term while using or being addicted to certain drugs harms maternal and child health by deterring women from seeking prenatal care. It is this deterrent effect that unifies every major health authority in opposition to laws that address pregnant women's addiction and prenatal health care as criminal justice matters. Prosecutions and convictions under such laws also destroy families. In addition, application of W.Va. Code § 61-8D-4a to pregnant women creates absurd consequences, such as pressuring women to terminate wanted pregnancies and criminalizing otherwise legal activities and decisions. Finally, singling out pregnant women who use controlled substances for punishment fundamentally misunderstands both the nature of addiction and the medical impact of *in utero* substance exposure.

Amici emphasize that the health issues addressed in this brief are not mere policy arguments or matters properly left to the Legislature. When state action impinges on constitutional rights, it is the independent duty of the courts to consider whether and what recognized state interests justify that infringement. And, if the rights at stake are fundamental, the courts must determine whether the means chosen to advance those interests– in this case criminal investigation, arrest, prosecution, and punishment – actually do so. Even laws that do not

necessarily implicate fundamental rights must be struck down if the claimed interests that support the law are irrational.

Because this unprecedented and improper judicial expansion of W.Va. Code § 61-8D-4a would frustrate, rather than advance, any asserted state interest in public health (compelling or otherwise), amici urge this to Court refuse to extend it to punish women for pregnancy outcomes and to vacate Ms. Louk's conviction.

ARGUMENT

Prosecuting women for crimes in relation to their own pregnancies violates women's constitutional rights to procedural due process, procreative privacy, equal protection, and freedom from cruel and unusual treatment. When the application of a law threatens constitutional rights, courts are called upon to evaluate the state interests involved. *See, e.g., Youngberg v. Romeo*, 457 U.S. 307, 320-321 (1982), citing *Poe v. Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting) ("In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance "the liberty of the individual" and "the demands of an organized society"). Depending on what right is at stake and the level of scrutiny accorded its imposition, courts must also consider whether and how the law's application serves that interest. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (the "Fourteenth Amendment forbids the government to infringe . . . 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.") (emphasis in original).

There are, however, no compelling or even rational state interests in prosecuting women for crimes because they continued pregnancies to term in spite of using certain drugs or having a drug problem. This is so because every recognized state interest that can be asserted to support

such action is undermined, rather than advanced, by prosecution. Maternal, fetal, and child health are threatened, and the consequences to individual women and their families have far-reaching effects that ultimately undermine community health and welfare.

I. Prosecuting women who carry their pregnancies to term in spite of a drug problem undermines maternal, child, and family health.

The prosecution of Stephanie Louk has, from the start, defied the best practices and recommendations of the medical profession and public health experts by transforming a pregnant patient's medical emergency into a criminal investigation. On June 12, 2013, Ms. Louk was rushed to Summersville Regional Hospital in acute respiratory distress. (A.R. 178.) She was 37 weeks pregnant at the time. (A.R. 231.) According to testimony from medical personnel who treated her, the priority upon her admission was to stabilize Ms. Louk and help her breathe. (A.R. 183.) While Ms. Louk admitted to having used methamphetamine the night before, the condition she exhibited, cardiomyopathy, is one that is not limited to people who use controlled substances. (A.R. 206-07.) In order for Ms. Louk to receive sufficient oxygen, she was intubated, and required resuscitation to save her life. (A.R. 182, 219-21, 255).

During their ministrations, hospital personnel became concerned about the fetal heart rate and delivered Ms. Louk's baby by emergency cesarean surgery. (A.R. 219-20.) Because of the oxygen deprivation experienced during Ms. Louk's respiratory distress, the baby was born unresponsive and was transported to Women and Children's Hospital in Charleston for further treatment. (A.R. 204, 208, 221.) When Ms. Louk regained consciousness, she discovered that she had been transferred to Alleghany Hospital in Pittsburgh. (A.R. 75.) At that hospital, while still in recovery and receiving pain medications due to dialysis, police officers subjected Ms. Louk to a bedside interrogation and questioned her about drug use. (A.R. 69, 74, 227-28, 231-323.) Ms.

Louk never had a chance to see her baby alive: after eleven days without improvement in the baby's condition or prognosis at Women and Children's Hospital, the family consented to the removal of life support. (A.R. 205, 255-56.)

Ms. Louk's near-death experience and infant loss is a tragedy needlessly compounded by the involvement of law enforcement and criminal prosecution. There is a broad consensus among medical and public health experts that there is nothing to gain — and much to lose — through the use of punitive responses to women who use controlled substances during pregnancy. Punishment in these circumstances yields no positive result. In fact, it has the opposite effect.

A. Health authorities are unanimous and unequivocal in their opposition to punitive responses to pregnant women and drug use.

Every major health authority, including each of the amici, opposes the imposition of criminal penalties on women who use controlled substances during pregnancy, emphasizing instead the importance of confidentiality, access to prenatal health, and non-coercive access to appropriate drug treatment when actually needed.[2] This opposition, which dates back over two decades, has been reiterated as recently as this March, when the American Academy of Pediatrics (AAP), the American Congress of Obstetricians and Gynecologists, and the March of Dimes released a statement in which they emphasized that non-punitive, family-centered treatment is the most effective approach to substance use disorders in pregnancy.[3]

In fact, the American College of Obstetricians and Gynecologists (ACOG) Committee on

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[2] *See, e.g.,* Am. Acad. of Pediatrics, Comm. on Substance Abuse, *Drug Exposed Infants*, 86 Pediatrics 639, 641 (1990); Am. Med. Ass'n, *Policy H-420.970: Treatment Versus Criminalization: Physician Role in Drug Addiction During Pregnancy* (1990), *reaff'd* 2010 (resolving "that the AMA oppose[s] legislation which criminalizes maternal drug addiction"); Am. Coll. Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Committee Opinion 473: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, 117 Obstetrics & Gynecology 200 (2011).

[3] Press Release, Am. Acad. Pediatrics, *Leading Medical, Children's and Women's Health Groups Support Legislation to Help Reduce Number of Newborns Exposed to Opioids* (Mar. 20, 2015).

Health Care for Underserved Women has called upon doctors to actively fight state laws and policies that lead to punitive interventions.[4] This is rooted in an understanding that "use of the legal system to address perinatal alcohol and substance abuse is inappropriate."[5] The ACOG committee urges that "[s]eeking obstetric-gynecologic care should not expose a woman to criminal or civil penalties, such as incarceration, involuntary commitment, loss of custody of her children, or loss of housing,"[6]noting that such penalties wrongly treat addiction as a failure of will. Instead, as ACOG explains, "[a]ddiction is a chronic, relapsing biological and behavioral disorder with genetic components [. . .] subject to medical and behavioral management in the same fashion as hypertension and diabetes."[7]

Other health care associations share ACOG's views. The AAP warns, "punitive measures taken toward pregnant women, such as criminal prosecution and incarceration, have no proven benefits for infant health."[8] Likewise, the American Public Health Association stresses that drug use during pregnancy is a public health concern, and recommends that "no punitive measures should be taken against pregnant women" for illicit drug use.[9] The American Nurses Association notes that "[t]he threat of criminal prosecution is counterproductive in that it prevents many women from seeking prenatal care and treatment."[10] And according to the American Psychological Association, "no punitive action should be taken against women on the basis of behaviors that

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[4] Am. Coll. Obstetricians & Gynecologists, Comm. On Health Care for Underserved Women, *supra* note 2, at 201.
[5] *Id.* at 201.
[6] *Id.* at 200.
[7] *Id.* at 200.
[8] Am. Acad. of Pediatrics, *supra* note 2, at 641 (1990).
[9] Am. Pub. Health Ass'n, *Illicit Drug Use by Pregnant Women*, Pol'y No. 9020 (1990).
[10] Am. Nurses Ass'n, *Position Statement on Opposition to Criminal A Prosecution of Women for Use of Drugs While Pregnant and Support for Treatment Services for Alcohol and Drug Dependent Women of Childbearing Age* (Apr. 5, 1991).

may harm a developing fetus."[11]

Positions opposing prosecution are informed by the understanding that punishment of women in relationship to their pregnancies does not further public health: specifically, criminal investigation, arrest, prosecution, and imprisonment deter pregnant women from getting the health care they need, and are too often selectively applied to those who are already disproportionately targeted by the criminal justice system: poor women and women of color.

B. Threats of arrest deter women from prenatal care and drug treatment.

The most effective protections against pregnancy complications and infant mortality, especially for women experiencing drug dependency, are commonsense healthcare interventions. Comprehensive, early, and high-quality prenatal care,[12] drug treatment,[13] and general health care have all been demonstrated to improve pregnancy outcomes whether or not a woman is able to achieve and maintain complete abstinence from drug use during the short length of pregnancy.[14]

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[11] Am. Psychol. Ass'n, *Resolution on Substance Abuse by Pregnant Women* (Aug. 1991). *See also* Am. Psychiatric Ass'n, Position Statement, *Care of Pregnant and Newly Delivered Women Addicts*, APA Document Reference No. 200101 (Mar. 2001) (also opposing criminal prosecution of pregnant women for the use of substances that risk harm to fetuses, urging treatment as the appropriate response).

[12] P. Moran et al., *Substance Misuse During Pregnancy: Its Effects and Treatment*, 20 Fetal & Maternal Med. Rev. 1, 16 (2009); A. Racine et al., *The Association Between Prenatal Care and Birth Weight Among Women Exposed to Cocaine in New York City*, 270 J. Am. Med. Ass'n 1581, 1585-86 (1993) (finding that pregnant women who use cocaine but who have at least four prenatal visits significantly reduce their chances of delivering low birth weight babies); E.F. Funai et al., *Compliance with Prenatal Care in Substance Abusers*, 14(5) J. Maternal Fetal Neonatal Med. 329, 329 (2003); C. Chazotte et al., *Cocaine Use During Pregnancy and Low Birth Weight: The Impact of Prenatal Care and Drug Treatment*, 19(4) Seminars in Perinatology 293, 293 (1995); S. Della Grotto et al. *Patterns of Methamphetamine Use During Pregnancy: Results from the Infant Development, Environment, and Lifestyle (IDEAL) Study*, 14 Maternal Child Health J. 519 (2010). But lack of prenatal care is associated with poor health outcomes. *See* A.M. Vintzileos et al., *The Impact of Prenatal Care on Neonatal Deaths in the Presence and Absence of Antenatal High-Risk Conditions*, 186(5) Am. J. Obstetrics & Gynecology 1011, 1013-14 (2002); S.H. Friedman et al., *Disposition and Health Outcomes Among Infants Born to Mothers with No Prenatal Care*, 33 Child Abuse & Neglect 116 (2009).

[13] *See e.g,* P.J. Sweeney et al., *The Effect of Integrating Substance Abuse Treatment with Prenatal Care on Birth Outcomes*, 20(4) J. Perinatology 219, 223 (2000) (indicating significantly better pregnancy outcomes when women received drug treatment and prenatal care.)

[14] *See* Substance Abuse & Mental Health Servs. Admin., *Curriculum for Addiction Professionals (CAP): Level 1,*

By contrast, state responses that create fear of arrest deter women from seeking prenatal care.[15] *See, e.g., Ferguson v. City of Charleston*, 532 U.S. 67, n14 (2001), *citing Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (recognizing that being reported to the police in the context of prenatal care "may have adverse consequences because it may deter patients from receiving needed medical care."). The atmosphere of fear and uncertainty created by the threat of arrest and incarceration also has the perverse effect of preventing women who are highly motivated to stop using from seeking drug treatment.[16] The American Medical Association has warned against the deterrent effect of threats of punishment:

> Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment. [17]

Even those women who are not entirely deterred from care may fear confiding in their health care providers about their drug use. A relationship of trust is critical for effective medical care because the promise of confidentiality encourages patients to disclose sensitive subjects to a physician.[18] Open communication between drug-using pregnant women and their health care

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Glossary – Prenatal Care ("Prenatal care is necessary for healthy pregnancies, particularly for women with alcohol or drug issues"); *see also*, N.C. Goler et al., *Substance Abuse Treatment Linked with Prenatal Visits Improves Perinatal Outcomes: A New Standard*, 28 J. Perinatology 597, 602 (2008) ("[Women] will only get better if they receive appropriate support that they can access without . . . stigmatization or fears of criminal investigation.").

[15] *See e.g.*, M.L. Poland et al., *Punishing Pregnant Drug Users: Enhancing the Flight from Care*, 31 Drug Alcohol Dependence 199 (1993).

[16] *See e.g.*, M.A. Jessup, *Extrinsic Barriers to Substance Abuse Treatment Among Pregnant Drug Dependent Women*, 33 J. Drug Issues 285 (2003); Poland et al., *supra* note 15; M. Terplan et al., *Methamphetamine Use Among Pregnant Women*, 113 Obstetrics & Gynecology 1289, 1290 (2009).

[17] Am. Med. Ass'n Bd. of Trustees, *Legal Interventions During Pregnancy,* 264 J. Am. Med. Ass'n 2663, 2667 (1990); *See also* Am. Med. Ass'n, *supra* note 2 (resolving "that the AMA oppose[s] legislation which criminalizes maternal drug addiction").

[18] Am. Med. Ass'n, Code of Medical Ethics, Opinion 5.05 – Confidentiality ("The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services.")

providers is critical,[19] and courts have long viewed confidentiality as fundamental to this relationship. *See, e.g., Jaffee v. Redmond*, 518 U.S. 1, 10 (1996) (upholding confidentiality of mental health records because a "confidential relationship" is necessary for "successful [professional] treatment," and "the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.").

The flight from care that would result from upholding the trial court's interpretation of W.Va. Code § 61-8D-4a endangers maternal and infant health.

C. Punishing pregnant women in relation to their own pregnancies separates families and harms children.

Such prosecutions not only increase the risk that women will avoid prenatal care, but also increase the risk to their health and their children's wellbeing when punitive sanctions are employed. The penalty for new mothers for violating W.Va. Code § 61-8D-4a as radically expanded by the lower court is up to fifteen years behind bars. For incarcerated people throughout the United States, jail and prison often means that the jailed person will lose, or never receive, necessary health care, putting their health and their lives at risk.[20] *See, e.g., Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 888 (E.D. Cal. 2009) (noting that in California prisons, one person was "dying needlessly *every six or seven days*.") (emphasis in original); *Estelle v. Gamble*, 429 U.S. 97 (1976) (establishing that prisons have an Eighth Amendment obligation to meet incarcerated people's serious medical needs).

Furthermore, the legal principle that would be created if the error of the Circuit Court is allowed to stand would not be limited to cases in which the baby dies, but would extend to cases in

[19] *See* R.H. Kelly et al., *The Detection & Treatment of Psychiatric Disorders and Substance Use Among Pregnant Women Cared for in Obstetrics*, 158 Am. J. Psych. 213 (2001).
[20] *See generally* M. Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555 (2003).

which the pregnant woman, through action or inaction, causes a survivable harm or a risk of harm to her child while *in utero*. *E.g.,* W.Va. Code § 61-8D-4; W.Va. Code § 61-8D-3. This could mean a term of imprisonment of up to 10 years, severely restricting the parent/child relationship.

The negative consequences to children of having an incarcerated parent are increasingly understood. Those consequences include the struggles with education, housing, and basic needs that flow from family disruption,[21] as well as the increased likelihood of foster care and long-term state involvement.[22] But these children are also at risk of harms to their health, including mental health, from both the separation from their parent and the stigma that attaches to the children themselves from having a parent in jail.[23] Even after incarceration, the stigma of conviction lingers in a host of legal and social consequences to the person who has been convicted, making it difficult to get public benefits such as housing and food stamps, to find employment, to pay off court-imposed fines and other sanctions, and to participate in full citizenship.[24] Not just the formerly imprisoned person, but also their children feel the economic and social impact of this ongoing stigma.

In short, a criminal justice response does not stop women from using drugs; does nothing to treat addiction; and in fact worsens public health and family and child wellbeing. Thus, there simply is no state interest furthered by such prosecutions.

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[21] *See* N.G. Levigne et al., *Broken Bonds: Understanding and Addressing the Needs of Children of Incarcerated Parents*, Urban Institute (2008); Erik Eckholm, *In Prisoners' Wake, A Tide of Troubled Kids*, N.Y. Times (July 4, 2009); Sarah Thompson, *Local Children of Incarcerated Parents Suffer Sentences of Their Own*, Times of N.W. Indiana (Jan. 20, 2011).

[22] Levigne et al., *supra* note 21, at 4-5.

[23] *Id.* at 7-9.

[24] *See, e.g.,* M. Mauer and M. Chesney-Lind, eds., Invisible Punishment: The Collateral Consequences of Mass Imprisonment (2002).

II. Punishing women for being unable to guarantee a healthy birth outcome creates absurd results.

In addition to being disastrous as a matter of maternal and fetal health, application of W.Va. Code § 61-8D-4a to the context of pregnant women and their health outcomes creates nonsensical results that could not have been intended by the Legislature. Specifically, a law that penalizes women who cannot guarantee a healthy outcome if they attempt to carry pregnancies to term will pressure women to avoid arrests by terminating pregnancies. The interpretation of this statute espoused by the court below also causes absurd consequences by creating a law that is so vague it potentially criminalizes a whole host of legal activities or conditions, including medical decision making in pregnancy. As this Court has long recognized, courts have a duty "to disregard a construction, though apparently warranted by the literal sense of the words in a statue, when such construction would lead to injustice and absurdity." *State ex rel. State v. Burnside*, 233 W.Va. 273, 281, 757 S.E.2d 803, 811 (W.Va. 2014) (citing Syllabus Point 2, *Click v. Click*, 98 W.Va. 419, 127 S.E. 194 (1925)). The unjust and absurd outcomes that would follow from permitting women to be prosecuted on the basis of pregnancy outcomes would frustrate the logical operation of law.

A. The judicial expansion of W.Va. Code § 61-8D-4a will push pregnant women who fear they may be unable to guarantee a healthy birth outcome to terminate pregnancies.

The threat of prosecution and the knowledge that the first woman convicted under this statute prison received a sentence of up to 15 years will undoubtedly send a message to pregnant women, but not the one hoped for by the Circuit Court. Women —including those who use drugs— who fear that they may give birth to babies with health problems may feel pressure to terminate wanted pregnancies rather than face arrest and incarceration. *See e.g., Johnson v. State*, 602 So. 2d 1288, 1296 (Fla. 1992) ("Prosecution of pregnant women for engaging in activities

harmful to their fetuses or newborns may also unwittingly increase the incidence of abortion").

Although it is difficult to know how frequently abortions result from fear of prosecution, one study reported that two-thirds of the women surveyed who reported using cocaine during their pregnancies considered having an abortion.[25] In at least one well-documented case, a North Dakota woman obtained an abortion to avoid prosecution. *See State v. Greywind*, No. CR-92-447 (N.D. Cass County Ct. Apr. 10, 1992). In response to being charged with reckless endangerment of her fetus, the woman terminated the pregnancy. As a result, the prosecutor dropped the charge. *See* Motion to Dismiss With Prejudice, *State v. Greywind*, No. CR-92-447 (N.D. Cass County Ct. Apr. 10, 1992) (prosecutor sought dismissal when defendant terminated her pregnancy, noting "the controversial legal issues presented are no longer ripe for litigation.")

Additionally, as pointed out by Ms. Louk's brief, West Virginia law is explicit that women are not held criminally liable for stillbirths or miscarriages, even when they are intentionally induced. *See* W.Va. Code § 61-2-30(d)(5). ("The provisions of [the Unborn Victims of Violence Act] do not apply to: [. . .] Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying."). Extending the criminal child abuse provisions to encompass incidents that occur during pregnancy creates results legally inconsistent with the intent of the Legislature.

The legal conundrum of "criminalizing a nonfatal injury while not criminalizing conduct resulting in a fatal injury" was recently addressed by the Supreme Court of North Dakota. *State v. Stegall*, 828 N.W.2d 526, 533 (N.D. 2013). That court resolved the inconsistency by interpreting the child endangerment statute as applicable to incidents that occur after live birth, reaffirming its refusal to extend North Dakota's child endangerment statute to punish women whose babies were

[25] *See* J. Flavin, *A Glass Half Full? Harm Reduction Among Pregnant Women Who Use Cocaine*, 32 J. Drug Issues 973, 985 tbl.2 (2002).

born exposed to controlled substances. *Id.* (citing *State v. Geiser*, 763 N.W.2d 469 (N.D. 2009) (reversing the child endangerment conviction of a woman who suffered a drug overdose and pregnancy loss)). In so doing, the Supreme Court of North Dakota not only acknowledged the near-consensus among states that pregnant women should not be criminally charged based on ingestion of controlled substances during pregnancy regardless of the theory or statutory scheme,[26] it held that there is "no distinction between a factual scenario in which the pregnant woman

[26] *See, e.g. Johnson v. State*, 602 S.2d 1288, 1296-97 (Fla. 1992) (reversing the conviction of a woman who used cocaine during pregnancy for 'delivering drugs to a minor'); *State v. Luster*, 419 S.E.2d 32, 35 (Ga. Ct. App. 1992) (holding that a statute proscribing distribution of cocaine from one person to another did not apply to a pregnant woman in relation to her fetus); *People v. Hardy*, 469 N.W.2d 50, 53 (Mich. App. 1991) (dismissing drug delivery charges against a pregnant woman who used cocaine); *Ex parte Perales*, 215 S.W.3d 418 (Tex. Crim. App. 2007) (refusing to interpret a drug delivery statute to apply to pregnancy); *State v. Wade*, 232 S. W. 3d 663, 666 (Mo. 2007) (despite Missouri's legal authority for protecting the unborn against third parties, legislature did not create penalties for women who experienced poor pregnancy outcomes); *State v. Gray*, 584 N.E.2d 710, 710 (Ohio 1992) (holding that the criminal child endangerment statutes did not encompass a pregnant woman who used cocaine). *See also State v. Martinez*, 137 P.3d 1195, 1197 (N.M. Ct. App. 2006) ("this court may not expand the meaning of 'human being' to include an unborn viable fetus because the power to define crimes and to establish criminal penalties is exclusively a legislative function"); *State v. Gethers,* 585 So. 2d 1140 (Fla. Dist. Ct. App. 4th Dist. 1991); *State v. Dunn*, 916 P.2d 952, 955-56 (Wash. Appl. 1996); *Reyes v. Superior Court*, 141 Cal. Rptr. 912 (Cal. Ct. App. 1997) (all following rules of statutory construction and lenity and refusing to rewrite state child abuse laws to permit punishment of pregnant drug using women who went to term); *State v. Deborah J.Z.*, 596 N.W. 2d 490 (Wis. Ct. App. 1999) (granting motion to dismiss first degree homicide and reckless conduct charges brought against a woman who used alcohol during pregnancy); *Herron v. State*, 729 N.E.2d 1008, 1011 (Ind. App. 2000) (holding that criminal child neglect provisions cannot criminalize conduct that occurs prior to a child's birth absent clear legislative authority). In fact, only two states' high courts have permitted pregnant women who used controlled substances to be charged with crimes, *see Ex Parte Ankrom & Kimbrough,* 152 So.3d 397 (Ala. 2013), *Whitner v. State,* 492 S.E.2d 777, 786 (S.C. 1997), and both explicitly based their holdings on an expansion of the term 'child' to encompass fetuses. The State has not argued, nor could it, that W.Va. Code § 61-8D-4a applies to fetuses *in utero*. If it did, this expansion of the law would not be applicable to Ms. Louk because a judicial construction that is new and unforeseen violates Due Process, in much the same way that ex post facto application of a newly enacted statute would. *See Bouie v. Columbia*, 378 U.S. 347, 353-54 (1964). Even in the few jurisdictions where courts have the authority to create new common law crimes from the bench, such crimes are not applicable to defendants until after they have had notice that they may fall within the new interpretation of the law. *See, e.g., State v. Horne*, 319 S.E.2d 703, 704 (S.C. 1984) (declaring a new crime of feticide under South Carolina courts' unique "right and the duty to develop the common law," but reversing the defendant's conviction because "[t]he criminal law whether declared by the courts or enacted by the legislature cannot be applied retroactively.") Tennessee permits criminal prosecution of women under a misdemeanor assault statute if they give birth to babies with certain symptoms related to substance exposure at birth, but this is pursuant to a legislative act that is clear and explicit, and which automatically passes out of operation in 2016. Tenn. Code Ann § 39-13-107(c).

prenatally ingests a controlled substance and the child subsequently dies *in utero* and the factual scenario in which the child is born alive for purposes of criminal prosecution of the mother." *Stegall*, 828 N.W.2d at 532-533. *See also State v. Aiwohi*, 123 P.3d 1210, 1223 (Haw. 2005) (holding that the fact that a child was born alive and lived for several days, and was therefore a "person" under the manslaughter statute, still does not permit a charge against the mother based on her use of methamphetamine during pregnancy). The intent of the West Virginia Legislature that pregnant women not be prosecuted for pregnancy outcomes should prevail in either situation.

Permitting W.Va. Code § 61-8D-4a to be applied to women who experience neonatal losses would prevent the sensible operation of the law, and instead would punish women for carrying pregnancies to term and thus lead them to terminate wanted pregnancies. This would put West Virginia criminal law at odds with the prevailing recommendations regarding the medical treatment of pregnant women.

B. The decision criminalizes a virtually endless variety of acts, omissions, conditions, or decisions during pregnancy.

While the current case involves a woman who used a criminalized drug, W.Va. Code § 61-8D-4a makes no mention whatsoever of controlled substances. As a result, the legal principle that would be created by permitting women to be punished under W.Va. Code § 61-8D-4a if they give birth to babies who do not survive would not be limited to drug use, and would apply to any number of acts or omissions believed by law enforcement to have led to the infant loss.

Neonatal losses can occur for a variety of reasons, and are not always clearly explicable. In 2013, there were 15,867 neonatal (within the first 28 days of life) deaths in the United States, 94

of which took place in West Virginia.[27] The majority of these neonatal deaths were attributable to some condition that arose in the perinatal period, most frequently complications due to prematurity and low birth-weight.[28] Under the interpretation of W.Va. Code § 61-8D-4a suggested by the Circuit Court, each of these deaths could give rise to a criminal investigation to rule out whether the grieving mother acted or failed to act in a manner that may have precipitated a premature delivery or low birth-weight.

Pregnant women are warned of a vast and often confusing list of activities and exposures to avoid, many of which are linked to premature delivery or other adverse infant outcomes.[29] If using a controlled substance and suffering a cardiac arrest can be grounds for prosecution under W.Va. Code § 61-8D-4a, it stands to reason that eating deli meat and contracting a listeria infection that leads to a placental infection and premature delivery would as well. The fact that methamphetamine is criminalized is immaterial under the provision: while the Uniform Controlled Substances Act prohibits manufacture, delivery, or possession of controlled substances, *see* W.Va. Code §60a-4-401–403, ingestion of a controlled substance is not a crime.

The list of possible causes for poor infant outcomes due to maternal factors is not limited to substances that pregnant women ingest. Working long hours in an environment with exposure

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[27] Ctrs. for Disease Control & Preventions, Nat'l Vital Stats Reports, *Deaths: Final Data for 2013* tbl. 21 (Number of infant deaths and infant mortality rates for 130 selected causes by race: United States, 2013).
[28] Ctrs. for Disease Control & Preventions, Nat'l Vital Stats Reports, *Deaths: Final Data for 2013* tbl. 22 (Number of Infant and Neonatal Deaths and Mortality Rates, by Race for the United States, Each State, Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Marianas, and by sex for the United States, 2013).
[29] *See* H. Murkoff & S. Mazel, *What to Expect When You're Expecting* 68-84 (4th ed. 2008) (warning women to avoid, among other things, changing a cat litter box, consuming unpasteurized cheese, sushi or deli meats, gardening without gloves, inhaling when handling household cleaning products, and ingesting excessive caffeine).

to chemicals, such as a nail salon,[30] having anxiety,[31] and being exposed to racism[32] have been linked to poor birth outcomes. ACOG's Committee on Ethics adds to the list poorly controlled diabetes, folic acid deficiency, obesity, and exposure to certain medications, asking, "If states were to consistently adopt policies of punishing women whose behavior (ranging from substance abuse to poor nutrition to informed decisions about prescription drugs) has the potential to lead to adverse perinatal outcomes, at which point would they draw the line?"[33] This says nothing of simple acts such as climbing a stepladder, crossing a street, driving a car, or lifting a heavy toddler that pose a risk of injury and deadly placental abruption to pregnant women and the fetuses they nurture in their bodies every day.

Lastly, the possibility that women might be criminalized for neonatal losses directly implicates pregnant women's constitutional rights to medical decision-making. While amici hope that pregnant women will follow the recommendations of their health care providers (and they most often do), amici recognize and respect the fact that pregnant women, no less than other persons under the Constitution, have a right to refuse any proposed course of medical treatment.[34] However, if this expansive interpretation of the law is upheld, a pregnant woman who disagrees with her health care provider about an intervention during childbirth may be criminally charged in the event of an adverse outcome. ACOG's Committee on Ethics calls this approach not only

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[30] Sarah Maslin Nir, *Behind Perfect Nails, Ailing Workers,* N.Y. Times, May 8, 2015, at A1, available at http://www.nytimes.com/2015/05/11/nyregion/nail-salon-workers-in-nyc-face-hazardous-chemicals.html (detailing harm, including miscarriage, caused by chemicals in nail polishes and solvents to women workers).

[31] N. Dole et al., *Maternal Stress and Preterm Birth*, 157 Am. J. Epidemiology 14 (2003).

[32] M.C. Lu et al., *Closing the Black-White Gap in Birth Outcomes: A Life-Course Approach,* 20 Ethnicity & Disease S2-62 (Winter 2010).

[33] Am. Coll. Obstetricians & Gynecologists, Comm. on Ethics, *Committee Opinion 321: Maternal Decision Making, Ethics, and the Law* 5 (Nov. 2005).

[34] *Id.*at 6 ("Justice requires that a pregnant woman, like any other individual, retain the basic right to refuse medical intervention, even if the intervention is in the best interest of her fetus.").

unjust, but "morally dubious" in light of clinical uncertainty and medicine's "limitations in the ability to concretely describe the relationship of maternal behavior to perinatal outcome."[35] For instance, an Illinois mother defied medical opinion that her baby's chance of survival was "close to zero" without immediate cesarean surgery and gave birth vaginally to a healthy baby boy. *In re Baby Boy Doe*, 632 N.E.2d 326, 328 (Ill. App. Ct. 1st Dist. 1994). Rather than issuing the court order for immediate cesarean surgery sought by the treating hospital, the Illinois appellate court recognized the fundamental importance of the right to medical decision-making. *Baby Boy Doe* 632 N.E.2d at 331 (citing *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 289 (U.S. 1990) (O'Connor, J., concurring)) ("[T]he liberty guaranteed by the due process clause must protect, if it protects anything, an individual's 'deeply personal' decision to reject medical treatment.") Here, the State proposes that the constitutionally-protected medical decisions of pregnant women may give rise to arrest, trial, and even imprisonment if something should go awry.

The potential for an unlimited power to second-guess every action or inaction of a pregnant woman, and the arbitrary enforcement it invites, has been considered by courts across the country deciding cases similar to this one. For instance, in 2010, the Supreme Court of Kentucky was faced with the question of whether a woman could be charged with wanton child endangerment of a baby born alive and testing positive for a criminalized drugs based on the mother's ingestion of the drug during pregnancy. *Cochran v. Commonwealth*, 315 S.W.3d 325 (Ky. 2010). That court "recognized that the application of the criminal abuse statutes to a woman's conduct during pregnancy could have an unlimited scope and create an indefinite number of new 'crimes.'" *Id.* at 328 (citing *Commonwealth v. Welch*, 864 S.W.2d 280, 283 (Ky. 1993)). Noting that the illegality of controlled substances provides no limit to the principle advanced by the

[35] *Id.*at 7.

prosecutors because "it is inflicting intentional or wanton injury upon the child that makes the conduct criminal under the child abuse statutes, not the criminality of the conduct per se," the court considered the range of legal activities that may cause adverse outcomes, such as smoking or downhill skiing. *Id.* The court concluded that to interpret a law such that these acts might be criminalized would create "a plainly unconstitutional result that would, among other things, render the statutes void for vagueness." *Id.*

Maryland's highest court has similarly refused to interpret its criminal child endangerment statute to apply to pregnant women in relation to their fetuses, noting that if it were so applied, pregnant women could be subjected to liability for "engaging in virtually any activity involving risk." *Kilmon v. State*, 905 A.2d 306, 311-12 (Md. 2006). In refusing to expand Arizona's criminal child abuse law to reach and punish a heroin-using woman who continued to term, the Arizona Appellate Court explained the potential consequences of re-writing the states law to apply to pregnant women:

> A pregnant woman's failure to obtain prenatal care or proper nutrition also can affect the status of the newborn child. Poor nutrition can cause a variety of birth defects: insufficient prenatal intake of vitamin A can cause eye abnormalities and impaired vision; insufficient doses of vitamin C or riboflavin can cause premature births; deficiencies in iron are associated with low birth weight. Poor prenatal care can lead to insufficient or excessive weight gain, which also affects the fetus. Some researchers have suggested that consuming caffeine during pregnancy also contributes to low birth weight.
>
> Other factors not involving specific conduct also can affect the fetus and, eventually, the status of the newborn child. The chance a woman will give birth to a child with Down's Syndrome increases if the woman is over the age of thirty-five. A couple may pass to their children an inheritable disorder, such as TaySachs disease or sickle-cell anemia. Occupational or environmental hazards, such as exposures to solvents used by painters and dry cleaners, can cause adverse outcomes. The contraction of or treatment for certain diseases, such as diabetes and cancer, also can affect the health of the fetus.

Reinesto v. Superior Court, 894 P.2d 733, 736-37 (Ariz. App. 1995). Recognizing the incursion into women's privacy and liberty that such a rule would permit, Illinois's high court has refused to recognize even tort liability for women based on the circumstances or outcomes of their pregnancies. *Stallman v. Youngquist*, 531 N.E.2d 355, 360 (Ill. 1988) (denying negligence claim of child born injured due to a car accident experienced by the mother during pregnancy, noting that "[s]ince anything which a pregnant woman does or does not do may have an impact, either positive or negative, on her developing fetus, any act or omission on her part could render her liable to her subsequently born child.").

III. Punishing women for using a controlled substance during pregnancy is not supported or justified by scientific research.

The motivation behind this prosecution was revealed by the Circuit Court's comments upon sentencing. Judge Gary L. Johnson, apparently disturbed by the medical report in this case, told Ms. Louk that "being a drug addict is no excuse for [using a controlled substance at 37 weeks pregnant,]" and that "someone is going to have to pay" for Ms. Louk's loss. (A.R. 311.) Judge Johnson explicitly denied her credit for the time spent in treatment at the Day Report Center in spite of her positive progress there, because "a message needs to be sent to the community that, if you're pregnant and you use drugs while you are pregnant, it affects that fetus." (A.R. 312.) While Judge Johnson acknowledged that most substance-exposed fetuses survive to birth and beyond, he expressed a belief that "the developmental delays and the problems that children have who are born drug addicted, we don't have the research to show how [. . .] bad their developmental delays are." *Id.* Implicit in this reasoning is an assumption that harm from prenatal exposure to illegal drugs is so great that pregnant women should be singled out for criminal charges carrying decades behind bars. Yet evidence-based research does not support the popular, but medically

unsubstantiated, assumption that any amount of prenatal exposure to an illegal drug causes unique, severe, or even inevitable harm.[36]

The assumption that exposure to illegal drugs is necessarily harmful has been rejected by courts that have evaluated the scientific research. For example, the Supreme Court of South Carolina unanimously overturned the conviction of a woman who suffered a stillbirth that allegedly was caused by the use of cocaine, noting specifically that the research the prosecutor relied on was "outdated" and that trial counsel failed to call experts who would have testified about "recent studies showing that cocaine is no more harmful to a fetus than nicotine use, poor nutrition, lack of prenatal care, or other conditions commonly associated with the urban poor." *McKnight v. State*, 661 S.E.2d 354, 358 n.2 (S.C. 2008). *Cf. N.J. Dept. of Children & Families v. A.L.*, 59 A.3d 576, 591 (N.J. 2013)(holding that judges "cannot fill in missing information on their own or take judicial notice of harm" in civil child abuse cases involving drug-exposed newborns).

A. Evidence does not support the assumption that exposure to criminalized drugs causes harms greater than or different from those resulting from common legal substances or conditions.

Although this prosecution was nominally based on Ms. Louk's having ingested a substance that may have precipitated her cardiac arrest, it is undergirded by the scientifically unsupported assumption that a pregnant woman's use of an illegal drug, in this case methamphetamine, causes unique and certain harm her fetus. In fact, existing scientific research contradicts popular myths about the use of controlled substances during pregnancy and does not support the judicial

[36] A.H. Schempf & D.M. Strobino, *Illicit Drug Use and Adverse Birth Outcomes: Is It Drugs or Context?*, 85 J. Urban Health 858 (2008); E.S. Bandstra et al., *Prenatal Drug Exposure: Infant and Toddler Outcomes*, 29 J. Addictive Diseases 245 (2010); A.H. Schempf, *Illicit Drug Use and Neonatal Outcomes: A Critical Review*, 62 Obstetric & Gynecological Survey 749, 750 (2007); B.L. Thompson et al., *Prenatal Exposure to Drugs: Effects on Brain Development and Implications for Policy and Education*, 10 Nature Revs. Neuroscience 303, 303 (2009) ("Many legal drugs, such as nicotine and alcohol, can produce more severe deficiencies in brain development than some illicit drugs, such as cocaine.").

expansion of W.Va. Code § 61-8D-4a.

In spite of pervasive myths proliferated by popular media,[37] science has failed to prove that *in utero* exposure to illegal drugs, including methamphetamine, causes unique harms distinguishable from those caused by other factors. In 2005, an expert panel reviewed studies about developmental effects of prenatal exposure to methamphetamine and concluded that, "the data regarding illicit methamphetamine are insufficient to draw conclusions concerning developmental toxicity in humans."[38] According to ACOG's Committee on Health Care for Underserved Women, while case reports and retrospective studies have suggested the possibility of defects attributable to methamphetamine, more rigorously-designed studies have not confirmed these findings.[39] That Committee concluded that, "taken together, findings to date do not support an increase in birth defects with use of methamphetamine," and emphasized the importance of comprehensive treatment and prenatal care.[40] This is consistent with the findings of other researchers that "thus far the only consistent association in human research is with low birth weight" and that other factors affecting substance-using women, such as poverty, psychiatric disorders, histories of child sexual abuse, and current domestic violence have an arguably greater impact on child development and maternal health.[41]

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[37] *See* Susan Okie, *The Epidemic that Wasn't*, N.Y. Times, Jan. 26, 2009 (describing media misinformation prevalent in the late 1980s and '90s); D.A. Frank et al., *Growth, Development, and Behavior in Early Childhood Following Prenatal Cocaine Exposure*, 285 J. Am. Med. Ass'n 1613, 1624 (2001) (concluding that "many findings once thought to be specific effects of *in utero* cocaine exposure are correlated with other factors, including prenatal exposure to tobacco, marijuana, or alcohol, and the quality of the child's environment.").

[38] Ctr. for the Eval. of Risks to Human Reproduction, *Report of the NTP-CERHR Expert Panel on the Reproductive & Developmental Toxicity of Amphetamine and Methamphetamine,* II-189 (July 2005).

[39] Am. Coll. Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Committee Opinion 479: Methamphetamine Abuse in Women of Reproductive Age* 2 (Mar. 2011).

[40] *Id.* at 2-3.

[41] Terplan et al., *supra* note 16, at 1285.

While the record does not indicate that Ms. Louk's baby showed any symptoms related to exposure to the benzodiazepines and opiates that appeared on the drug test, some newborns who are exposed to opioids *in utero* experience a transitory and treatable set of symptoms at birth known as neonatal abstinence syndrome. But even in those circumstances, exposure to opioids is not associated with birth defects,[42] and if a newborn shows signs of Neonatal Abstinence Syndrome, safe and effective treatment can be instituted in the nursery setting.[43]

This is not to say that prenatal exposure to illicit drugs is benign or that ongoing research may not reveal something as yet undiscovered. But it is irrational to single out pregnant women with addictions to some drugs for criminal prosecution while providing support to women addicted to other drugs with proven risks to fetuses (i.e. nicotine). Given the grave harms to maternal and fetal health that result from prosecutions, amici urge that the commonsense approach applied to nicotine addiction should be applied other kinds of addiction. To do otherwise drives women away from the health care they need to have healthy pregnancies.

B. Research shows that addiction is not a voluntary act cured by threats.

A policy of treating pregnant women who ingest certain drugs as tantamount to willfully neglecting a child who has been born is not only hazardous to maternal and child health, it is dangerously misinformed and flies in the face of the medical understanding of addiction.

Medical groups and experts recognize that addiction is not a failure of willpower or a manifestation of poor choices. Rather, according to the American Society of Addiction Medicine,

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[42] G.D. Helmbrecht & S. Thiagarajah, *Management of Addiction Disorders in Pregnancy*, 2 J. Addiction Med. 1, 9 (2008).

[43] Substance Abuse & Mental Health Servs. Admin., U.S. Dep't Health & Human Servs., *Methadone Treatment for Pregnant Women,* Pub. No. SMA 06-4124 (2006).

addiction is a primary, chronic disease of brain reward, motivation, memory and related circuitry.[44] It is the product of complex hereditary and environmental factors.[45] Just as the causes of addiction are biologically complex, so too are the mechanisms controlling the ability to overcome it. Addiction has pronounced physiological factors that heavily influence the user's ability to cease use and seek treatment.[46] It is a chronic disease that should be managed like diabetes or heart disease.[47]

It has long been acknowledged that drug dependence often cannot be overcome without treatment. *See Linder v. United States*, 268 U.S. 5, 18 (1925); *Robinson v. California*, 370 U.S. 660 (1962). Addiction is marked by "compulsions not capable of management without outside help." *Robinson*, 370 U.S. at 671 (Douglas, J., concurring). The compulsive nature of drug dependency makes warnings or threats unlikely to deter use – even though most pregnant women with addictions express strong desires to end their drug use.[48]

C. Effective, appropriate treatment for addiction is inaccessible to many.

But finding and accessing the treatment necessary to end that drug use – especially when pregnant – is extraordinarily difficult. Across the state, West Virginians face barriers to treatment for substance use disorders. An estimated 35,000 adults in West Virginia need, but have not received, treatment for a drug abuse problem;[49] another 88,000 need, but have not received, treatment for alcohol problems.[50] The situation is even bleaker for pregnant women. Of 82

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[44] Am. Soc'y of Addiction Med., *Definition of Addiction* (Apr. 19, 2011).
[45] Am. Med. Ass'n Bd. of Trustees, *supra* note 17, at 2669.
[46] C.G. Bhuvaneswar et al., *Cocaine and Opioid Use During Pregnancy: Prevalence and Management*, 10(1) Primary Care Companion J. Clinical Psychiatry 59, 61 (2008).
[47] Press Release, Am. Soc'y Addiction Med., *New Definition of Addiction* (Aug. 15, 2011).
[48] Terplan et al., *supra* note 16 at 1290.
[49] Substance Abuse & Mental Health Servs. Admin., *2012-2013 National Surveys on Drug Use and Health: Model-Based Estimated Totals,* 43 tbl. 21 (Feb. 10, 2015), *available at* http://www.samhsa.gov/data/sites/default/files/NSDUHsaeTotals2013/NSDUHsaeTotals2013.pdf
[50] *Id.* at 45 tbl 22.

treatment providers in West Virginia, only 18 serve pregnant women.[51] Often, such programs are not actually accessible because of transportation barriers, cost, waiting lists, and lack of childcare and mental health service, which impede access to successful treatment.[52]

In sum, while most pregnant women with addiction are motivated to do everything they can for healthy pregnancies, pregnancy does not give women an enhanced capacity to overcome addiction.[53] Prosecuting pregnant women because they are unable to overcome their drug problem misunderstands addiction and treatment. Indeed, this misuse of W.Va. Code § 61-8D-4a raises a host of constitutional violations that are not justified by any state interest.

CONCLUSION

The prosecution of pregnant women for Child Neglect Resulting in Death based on a pregnancy outcome cannot be reconciled with legal or medical standards. The threat of prosecution thwarts maternal and fetal health by deterring health-promoting behaviors, defies the sensible operation of law by pressuring women to have abortions and creating a law that subjects pregnant women to prosecution for an unlimited array of conditions, and flouts modern understandings of the nature and treatment of addiction. The Circuit Court of Nicholas County erred in espousing an illogical and unconstitutional expansion of W.Va. Code § 61-8D-4a. West Virginia' interests in promoting maternal and child health are not only disserved by such an application of the law, they are endangered. For these reasons, amici respectfully request that this Court correct this error and vacate Ms. Louk's conviction.

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[51] Substance Abuse & Mental Health Servs. Admin., *Substance Abuse Treatment Facility Locator*, *available at* http://findtreatment.samhsa.gov (visited Apr. 1, 2015).
[52] *See* T.M. Brady & O.S. Ashley, *Women in Substance Abuse Treatment: Results from the Alcohol and Drug Services Study (ADSS)*, Sept. 2005; *see also* Jessup, *supra* note 16.
[53] Bhuvaneswar et al., *supra* note 46, at 64 (2008) ("Even for motivated women, obtaining treatment is not always straightforward.").

Respectfully submitted,

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ANNEX A: LIST OF AMICI

Organizations

Amicus curiae **West Virginia State Medical Association** was established in 1867 as a physician-based organization which focuses on promoting the public health; maintaining the highest standards of medical education; securing the enactment and enforcement of just medical laws; and promoting the time-honored commitment of the medical profession to the prevention and cure of disease, and in improving the quality of life for the people of our state.

Amicus curiae **West Virginia Perinatal Partnership** is a statewide partnership of healthcare professionals and public and private organizations working to improve perinatal health in West Virginia. Founded in 2006, the Partnership coordinates programs and develops policies to address the State's health outcomes among mothers and their babies. The members of the Central Advisory Council, Steering Committee and health care professionals throughout the state, who serve on the Partnership's committees, continue to work on addressing the many problems that impact the health of West Virginia mothers and babies. First identified in a "Key Informant Survey" completed in 2006, the use of substances including tobacco, alcohol, prescriptions and illicit drugs during pregnancy continues to be a major factor affecting newborns. In accordance with scientifically-supported methodology, the Partnership focuses on non-punitive care to improve outcomes for mother and child. Beginning in 2009, pilot projects that seek to provide comprehensive medical, behavioral, and social services to pregnant women with addiction disorders have been and continue to be developed. For more information, please see: www.wvperinatal.org/initiatives/substance-use-during-pregnancy/.

Amicus Curiae **West Virginia Society of Addiction Medicine** ("WVSAM") represents the WV Chapter of the American Society of Addiction Medicine (ASAM). The core purpose is to improve the care and treatment of people with the disease of addiction and advance the practice of Addiction Medicine. The mission is to increase access to and improve the quality of addiction treatment; to educate physicians (including medical and osteopathic students), and other health care providers and the public; to support research and prevention; to promote the appropriate role of the physician in the care of patients with addiction; and to establish addiction medicine as a specialty recognized by professional organizations, governments, physicians, purchasers and consumers of health care services, and the general public.

Amicus curiae **West Virginia Lawyer Assistance Program** is, among other things, a program to help lawyers with problems involving substance abuse and related problems, and while I have not had time to poll our officers and committee I certainly can express my very strong endorsement of the purpose of your Amicus position and I believe our group would also do so. We are involved in a problem of epidemic proportions and I personally believe an intense study needs to be conducted and this case will present an excellent opportunity to do so.

Amicus curiae **American College of Obstetricians and Gynecologists** ("ACOG") is a non-profit educations and professional organization founded in 1951. The College's objectives are to foster improvements in all aspects of healthcare of women; to establish and maintain the highest possible

standards; and to encourage contributions to medical and scientific literature. The College's companion organization, the American Congress of Obstetricians and Gynecologists, is a professional organization dedicated to the advancement of women's health and the professional interests of its members. Sharing more than 56,000 members, including 289 in West Virginia, the College and the Congress are the leading professional associations of physicians who specialize in the healthcare of women.

Amicus curiae **American Society of Addiction Medicine ("ASAM")** is a professional society representing over 3,200 of the nation's foremost physicians and associated professionals dedicated to increasing access and improving the quality of addiction treatment; educating physicians, other medical professionals and the public; supporting research and prevention; and promoting the appropriate role of physicians in the care of patients with addiction. ASAM believes that the proper, most effective solution to the problem of substance use during pregnancy lies in medical prevention, i.e. education, early intervention, treatment, and research on chemically dependent pregnant women. ASAM further believes that state and local governments should avoid any measures defining alcohol or other drug use during pregnancy as a crime and should avoid prosecution, jail, or other punitive measures as a substitute for providing effective health services.

Amicus Curiae **Association of Reproductive Health Professionals ("ARHP")** is a national non-profit, interdisciplinary medical association for leaders in the field of reproductive health. Founded in 1963 and comprised of physicians, nurse practitioners, physician assistants, pharmacists, researchers, and educators, ARHP serves as an important source of reproductive health education and information for health care professionals, patients, legislators, other professionals, and the public at large. ARHP is concerned that the threat of prosecution, conviction, and incarceration will undermine accepted health care standards and will interfere with the ability of physicians, nurse practitioners, and other clinicians who treat pregnant and parenting women to provide appropriate, quality health care.

Amicus curiae **C.A.R.E. Alliance NW, Inc.** is an innovator among therapeutic addiction treatment programs; offering professional advocacy, education, recovery and addiction counseling services, with a special emphasis on maternal addiction. This organization was created to offer unique and more fully integrated programs for pregnant, postpartum and parenting women with substance use disorders. Programs design integrates specialized treatment and recovery counseling services with pregnancy, birthing, and postpartum support through a professional doula with advanced clinical training. Patient advocacy and education topics includes basic childbirth education, pain management in recovery, clinical guidance understanding and responding to Neonatal Abstinence Syndrome (NAS), support breastfeeding, advocacy interacting with health care providers and neonatal intensive care staff, and understanding patient rights in medical settings as well as child welfare systems. C.A.R.E. Alliance NW, seeks to reduce barriers in prenatal care for women with substance use disorders, increase access to compassionate care within existing systems of care, and provide comprehensive advocacy in settings which pregnant women with substance use disorders have often been poorly served. C.A.R.E. Alliance NW works to achieve this through active involvement in community stakeholder groups, educating direct care providers, and offering therapeutic patient services through its unique integrated model of care.

Amicus curiae **Drug Policy Alliance** ("DPA") is the nation's leading advocacy organization dedicated to broadening the public debate over drug use and regulation and to advancing pragmatic drug laws and policies, grounded in science, compassion, public health and respect for human rights. DPA pursues these goals in New Jersey and around the country. DPA is a non-profit , non-partisan organization with more than 25,000 members and active supporters nationwide. DPA maintains an office based in Trenton committed to reforming drug policies in New Jersey that are harmful and ineffective, and promoting health-centered policy approaches to problems of substance misuse in the state. DPA has actively taken part in cases in state and federal courts across the country in an effort to bring current scientific and public health data to bear on drug-related issues, and to combat irrational fears, prejudices and misconceptions about _various drug-related matters that have, with regrettable frequency, distorted sound public policies regarding drug users and their families.

Amicus curiae **Drug Policy Forum of Hawai`i** ("DPFHI") is a non-profit advocacy and educational organization whose mission is to encourage the development of effective drug policies that minimize economic, social, and human costs; and to promote the consideration of pragmatic approaches based on scientific principles, effective outcomes, public health considerations, concern for human dignity and the well being of individuals and communities. Its board of directors is comprised of individuals working in the fields of law, criminal justice, medicine, public health and social work who have taken an active role in educating decision makers and the general public about the medical and scientific realities of perinatal addiction and *in utero* exposure to alcohol, tobacco and other drugs while urging the adoption of policies and legal rules that experience teaches are most likely to promote healthy outcomes. DPFHI envisions a just society in which criminalization is reserved for those who pose a genuine danger to public safety, and accordingly it strongly disagrees with the notion that addicts should be punished and incarcerated.

Amicus curiae **Harm Reduction Coalition** ("HRC") is a national advocacy and capacity-building organization that promotes the health and dignity of individuals and communities impacted by drug use. HRC was founded in 1993 and incorporated in 1994 by a working group consisting of syringe exchange providers, advocates, and drug users. Today, HRC is a diverse network of community based organizations, service providers, researchers, policy-makers, academics, and activists challenging the persistent stigma placed on people who use drugs, and advocating for sensible policy reform. HRC advances policies and programs that help people address the adverse effects of the "War on Drugs" and drug use including overdose, HIV, Hepatitis C, addiction, and incarceration. HRC recognizes that the structures of social inequality impact the lives and options of affected communities. Since its inception in 1994, HRC has advanced harm reduction philosophy, practice, and public policy by prioritizing areas where structural inequalities and social injustice magnify drug related harm.

Amicus curiae **Institute for Health and Recovery** ("IHR") is a statewide service, research, policy and program development agency. IHR's mission is to develop a comprehensive continuum of care for individuals, youth and families affected by alcohol, tobacco and other drug use, mental health problems and violence/trauma. IHR focuses on the development of collaborative models of service

delivery and the integration of gender-specific, trauma-informed and relational/cultural models of prevention, intervention and treatment. IHR serves individual women and men, and families, with a continuing emphasis on serving pregnant and parenting women and their children, and on fostering family-centered, strength-based and multiculturally competent approaches. IHR members know firsthand the fears pregnant substance-abusing women have regarding prosecution, causing them to be reluctant to seek prenatal care and substance abuse treatment.

Amicus curiae **International Centre for Science in Drug Policy** ("ICSDP") is an organization dedicated to improving community health and safety by conducting research and public education on best practices in drug policy while working collaboratively with communities, policy makers, law enforcement, and other stakeholders to help guide effective and evidence-based policy responses to the many problems posted by illicit drugs.

Amicus curiae **Legal Action Center** ("LAC") is a national public interest law and policy organization, with offices in New York and Washington, D.C., that performs legal and policy work to fight discrimination against and promote the privacy rights of individuals with criminal records, alcohol/drug histories, and/or HIV/AIDS. LAC has done a tremendous amount of policy advocacy work to expand treatment opportunities for people with alcohol/drug histories and to oppose legislation and other measures that employ a punitive approach, rather than a public health approach, to addiction. They have also represented individuals in alcohol/drug treatment programs who face discrimination based on inaccurate and outmoded 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 **Medication Assisted Recovery Services** ("MARS") **Project** is a peer recovery services project. The MARS Project is comprised of persons in recovery with the assistance of methadone or buprenorphine helping other patients on methadone or buprenorphine to find recovery. The MARS Project is based on the belief that Methadone Patients who receive training to understand addiction, methadone treatment, and recovery will have a better chance at achieving sustained recovery than patients who do not receive training. The MARS Project provides peer recovery support services, not treatment, The reason that the MARS Project works is because it is patients taking ownership of their own Recovery. The MARS Project is an undertaking of the National Alliance for Medication Assisted Recovery in collaboration with Albert Einstein College of Medicine, Division of Substance Abuse and funded by the Substance Abuse and Mental Health Services Administration.

Amicus Curiae **National Alliance of Medication Assisted Recovery** ("NAMA Recovery") is an organization composed of Medication Assisted Treatment (i.e. methadone and buprenorphine) patients and healthcare professionals who support quality opiate agonist treatment. NAMA Recovery has thousands of members worldwide with a network of chapters in the United States and international affiliated organizations. The primary objective of NAMA Recovery is to advocate for the patient in treatment by destigmatizing and empowering MAT patients. The goals of NAMA Recovery include eliminating discrimination against MAT patients, including pregnant and parenting women; creating a more positive image of MAT; helping to preserve patients' dignity and

rights and making treatment available on demand to every person who needs it; First and foremost, NAMA Recovery confronts the negative stereotypes that impact on the self esteem and worth of many medication assisted treatment patients with a powerful affirmation of pride and unity.

Amicus curiae **NAMA (National Alliance for Medication Assisted) Recovery of Tennessee** is the Tennessee statewide and Northwestern Georgia chapter of the NAMA Recovery. NAMA Recovery is an organization composed of methadone and buprenorphine patients, providers, family, friends and advocates who are strong supporters of quality opiate agonist therapy. The primary objective of NAMA Recovery is to advocate for the patient in treatment by destigmatizing and empowering medication assisted treatment patients. First and foremost, NAMA Recovery confronts the negative stereotypes that impact on the self esteem and worth of many individuals with substance use disorders — both those in treatment and/or 'recovery' as well as active users who have yet to seek evidence based medical interventions — with a powerful affirmation of pride and unity. NAMA Recovery advocates for a medical approach to substance use disorders and educates the public about the ineffectiveness of a criminal justice system response to a chronic health condition.

Amicus curiae **National Perinatal Association** ("NPA") promotes the health and well being of mothers and infants enriching families, communities and our world. NPA is a multi-disciplinary organization comprised of doctors, nurses, midwives, social workers, administrators, parents, and those interested in collaborating to improve perinatal health.

Amicus curiae **National Women's Health Network** ("NWHN") improves the health of women by influencing public policy and providing health information to support decision-making by individual consumers. Founded in 1975 to give women a greater voice within the health care system, NWHN aspires to a health care system that is guided by social justice and reflects the needs of diverse women. NWHN is committed to advancing women's health by ensuring that women have self-determination in all aspects of their reproductive and sexual health; challenging the inappropriate medicalization of women's lives; and establishing universal access to healthcare that meets the needs of diverse women. The core values that guide NWHN's work include its belief that the government has an obligation to safeguard the health of all people; that it values women's descriptions of their own experiences and believes health policy should reflect the diversity of those experiences; and that it believes evidence rather than profit should determine what services and information are available to inform women's health decision-making and practices. NWHN is a membership-based organization supported by 8,000 individuals and organizations nationwide.

Amicus curiae **North American Society for Psychosocial Obstetrics and Gynecology** ("NASPOG") aims to foster scholarly scientific and clinical study of the biopsychosocial aspects of obstetric and gynecologic medicine. Topics of interest to members involve a wide spectrum of psychological and social issues as they pertain to pregnancy and women's health. The aim is broadly defined to include the psychological, psychophysiological, public health, socio-cultural, ethical and other aspects of such functioning and behavior. NASPOG is comprised of approximately 200 members drawn from the fields of obstetrics and gynecology, psychiatry, psychology, nursing, social work, anthropology, and other related disciplines

Amicus curiae **National Council on Alcoholism and Drug Dependence, Inc.** ("NCADD"), and its Network of Affiliates, provides prevention, education, information, referral, advocacy, and hope in the fight against the chronic diseases of alcoholism and other drug addictions. Founded in 1944 and based in New York, NCADD Affiliates historically have provided confidential assessment and referral services for persons addicted to alcohol and other drugs and their families. In 1990, the NCADD Board of Directors adopted a policy statement on "Women, Alcohol, Other Drugs, and Pregnancy" recommending that "[s]tates should avoid measures which would define alcohol and other drug use during pregnancy as prenatal child abuse and should avoid prosecutions, jailing, or other punitive measures which would serve to discourage women from seeking health care services."

Amicus curiae **National Latina Institute for Reproductive Health** (**"**NLIRH**"**) is the only national reproductive justice organization dedicated to building Latina power to advance health, dignity, and justice for 26 million Latinas, their families, and communities in the United States through leadership development, community mobilization, policy advocacy, and strategic communications. Latinas face a unique and complex array of barriers to accessing reproductive health and rights, including economic inequality, xenophobia, and racial and ethnic discrimination. These circumstances make it especially difficult for Latinas to access basic health care, including reproductive health care.

Amicus curiae **Project R.E.S.P.E.C.T** (Recovery, Empowerment, Social Services, Education, Community and Treatment) Addiction Recovery in Pregnancy at Boston Medical Center is a comprehensive, multidisciplinary team treating pregnant women with Substance Abuse Disorders in the Greater Boston Area. Project R.E.S.P.E.C.T has been helping and treating pregnant women for several decades and cares for and treats more than 125 mother/baby pairs per year, managing their medical, obstetric and psychiatric health. Project R.E.S.P.E.C.T. provides opioid maintenance therapy, including methadone and buprenorphine. As one of the largest addiction treatment and obstetric clinics in the country, Project R.E.S.P.E.C.T strongly objects to the states' position in this case. Comprehensive health care for women with substance abuse disorders has been shown to reduce preterm delivery, NICU admissions, and low birth weight, not to mention the harm reduction and reduction of morbidity for the mother.

Amicus curiae **Student Assistance Services** is a nonprofit substance abuse prevention agency.

Individual Experts[*]

Amicus curiae **Ronald Abrahams, MD,** is a Family Physician in Vancouver. He is a Clinical Professor in the Department of Family Practice at UBC and Medical Director of Perinatal Addictions at BC Women's Hospital as well as Consultant Physician at the Sheway Program. He is a member of the Prima National group. Dr. Abrahams is the founding Medical Director of the FIR (Families In Recovery) Rooming in program at BCWH-the first of its kind in North America. The

[*] Institutional affiliations of individual experts are provided for identification purposes only, and do not indicate institutional endorsement unless otherwise noted.

unit has been named a "leading practice" by the Canadian Council of Health Accreditation, cited in the 2007 Kroeger Award for maintaining a high quality of care and recently demonstrated peer reviewed improved outcomes. Since its inception 10 years ago, over 1200 women, their babies and families have benefited from this program. For his work during the last 30 years he has been recognized as an invited speaker nationally and internationally for his role in developing evidenced-based Harm Reduction guidelines and protocols for women with problematic substance use in pregnancy. He is an Associate of The School of Population and Public Health at the University of British Columbia and a Clinical Investigator with The Women's Health Research Institute and he is a Consultant to The Austria-American Institute and the Open Society Institute. Dr. Abrahams received the 2008 Kaiser Foundation National Award for Excellence in Leadership for Harm Reduction Programs.

Amicus curiae **Annette Ruth Appell, JD** is Professor of Law at Washington University Law School and, by courtesy, at the Brown School of Social Work at Washington University. She teaches Children and the Law and directs the Children & Family Advocacy Clinic, which provides legal representation, including guardian ad litem representation, to children and families in child abuse and neglect, domestic violence, custody, adoption, and guardianship matters. She has published numerous articles and book chapters in the areas of children's' rights, children's legal representation, child welfare, motherhood, family law, and adoption.

Amicus curiae **Elizabeth M. Armstong, PhD, MPA,** holds a joint appointment in the Department of Sociology and the Woodrow Wilson School at Princeton University and is a faculty associate at both the Office of Population Research and the Center for Health and Wellbeing. She has published and authored articles in the scholarly literature on substance use during pregnancy, family planning, adolescent motherhood, and the sociology of pregnancy and birth, including the first book to challenge conventional wisdom about drinking during pregnancy: *Conceiving Risk, Bearing Responsibility: Fetal Alcohol Syndrome and the Diagnosis of Mortal Disorder*. Her current research includes a longitudinal study of agenda setting around disease in the U.S. and a study of fetal personhood and obstetrical ethics.

Amicus curiae **Sheila Blume, MD,** is retired medical director of Addiction Services at South Oaks Hospital and Clinical Professor of Psychiatry at the State University of New York at Stony Brook. Dr. Blume is a Fellow and former President of the American Society of Addiction Medicine and a Distinguished Life Fellow of the American Psychiatric Association, where she chaired the Committee on Treatment Services for Addicted Patients for several years.

Amicus curiae **Adam J. Breinig, DO, FAAFP,** is the current President of the West Virginia State Medical Association, and is a practicing physician in South Charleston, WV, specializing in Family Practice.

Amicus curiae **Norma Finkelstein, PhD, LICSW,** is founder and Executive Director of the Institute for Health and Recovery, a Massachusetts statewide services, policy, program development, training, and research organization, working in the area of family-centered addiction, co-occurring disorders and trauma-informed care for adults and children. Prior to this, Dr.

Finkelstein was the founder and Executive Director of the Women's Alcoholism Program/CASPAR, Inc., a comprehensive prevention, education, and treatment program for chemically dependent women and their families. Her expertise in designing and managing services as well as in the areas of policy, planning, training, and research, has resulted in over 50 professional publications and curricula. Dr. Finkelstein was chair of the CSAT Women's TIPS, a participant on the consensus panel for the CSAP FASD TIPS, and a past member of SAMHSA Women's Advisory Council. She currently serves as Co-Chair of the Substance Abuse Subcommittee of the National Child Traumatic Stress Network.

Amicus curiae **Nikki Easterling, M.Ed., CDP, CC** is the Founder and Executive Director of C.A.R.E. Alliance NW, Inc., an organization established to provide integrated counseling, advocacy, recovery, and education for pregnant and parenting women with substance use disorders. She has dedicated her career to advancing the quality and access to gender specific counseling and treatment programs. She has also been on the forefront of efforts to expand access to medication-assisted treatment, specifically for pregnant women. A specialist in maternal addiction, she has an extensive education the biology, physiology, neurology, and psychology of pregnant women with substance use disorders as well as Neonatal Abstinence Syndrome. Her advocacy and education work have led to regional and national presentations on topics such as Hormones and Reproductive Cycles; Opioids and Endocrine System: How opioids effect women; Developing Family Based Programs in Opiate Recovery Programs; Identifying and Treating Neonatal Abstinence Syndrome; as well as a recurrent guest professor lecture in addressing Practical Applications for Medical Ethics with Substance Using Pregnant Women. She is an active professional member of NAADAC, American Counseling Association, American Psychological Association, International Association for Marriage and Family Counselors, and DONA International.

Amicus curiae **Fonda Davis Eyler, PhD,** is a Professor Emeritus in the Department of Pediatrics of the University of Florida College of Medicine and is also a licensed Developmental Psychologist. From 1988 to 2011, Dr. Eyler was Developmental Director of Early Steps, an early intervention program for children from birth to three years of age, who lived in the surrounding 16 counties and had developmental delays and disabilities. She was a Principle Investigator on a prospective, longitudinal research study that has been following a cohort of the children born to women who used cocaine during their pregnancy and a matched comparison group of pregnant women who were not addicted to cocaine and their children. Dr. Eyler brings a wealth of knowledge concerning the impact on children of drug abuse during pregnancy.

Amicus curiae **Julia B. Frank, MD,** is a board certified psychiatrist in Washington, DC, where she co leads a clinic for pregnant women with perinatal psychiatric problems. She also has the necessary training and certification to treat opioid abuse and dependence with buprenorphine. Dr. Frank is a graduate of Harvard College and the Yale University School of Medicine, and she completed an internal medicine residency before pursuing psychiatry residency and fellowship at Yale. A professor of psychiatry at George Washington University, Dr. Frank has been the faculty advisor of a local chapter of medical students for choice and is a long time member of the family violence task force of the Medical Society of the District of Columbia. She is also a member of the

Society for Women's Health Research and International Maree Society. Dr. Frank is the author or co-author of numerous publications, including: *What is the best approachfor management of depression in a pregnant woman after a suicide attempt?; Depression with melancholic features during pregnancy; Prevention and Diagnosis of Postpartum Psychosis*; and *Risks and Rewards of Returning to Work Postpartum.*

Amicus curiae **P. Bradley Hall, MD, DABAM, FASAM,** is a third-generation West Virginia physician originally from Clarksburg. He currently serves as President/Executive Director of the West Virginia Society of Addiction Medicine (WVSAM). He is a Fellow of the American Society of Addiction Medicine and is a Diplomat of the American Board of Addiction Medicine. He is a certified Medical Review Officer by the American Association of Medical Review Officers and the Medical Review Officer Certification Council. He is also a Board Registered Interventionist with the Association of Intervention Specialists (AIS). Nationally, Dr. Hall is currently President-Elect of the Federation of State Physician Health Programs. He is also the current Alternate Regional Director to the Board of Directors of the American Society of Addiction Medicine. He recently served on the Federation of State Medical Boards Impaired Physicians Committee in the updating of the Impaired Physicians policy. Dr. Hall is also a member of the West Virginia Governor's Prescription Drug Abuse Advisory Committee. Dr. Hall currently serves as the Executive Medical Director of the WV Medical Professionals Health Program; the licensure board(s) designated Physicians Health Program.

Amicus curiae **Wanda M. Hembree, MD,** is an Associate Professor in the Department of Obstetrics and Gynecology. She has been delivering babies in the state of West Virginia for 25 years. She serves on the Substance Abuse Committee of the WV Perinatal Partnership. She has seen firsthand the devastating effects of maternal substance abuse that have insidiously taken over our state.

Amicus curiae **T. Stephen Jones, MD, MPH,** is a consultant public health epidemiologist who retired from the Centers for Disease Control and Prevention (CDC) in 2003 after more than 25 years of service as a Commissioned Officer in the US Public Health Service. He has worked on HIV prevention related to drug injection since 1987; with major interests in HIV serologic studies of injection drug users (IDUs), HIV counseling and testing in drug treatment programs, evaluation of syringe exchange programs, increasing the availability to IDUs of sterile injection equipment, safe disposal of used syringes, prevention of drug overdoses, and integration of viral hepatitis prevention into public health programs. He strongly supports the rights of drug-dependent persons to be cared for in the same way people are treated for other chronic medical conditions such as diabetes.

Amicus curiae **Karol Kaltenbach, PhD,** is Emeritus Professor of Pediatrics, Sidney Kimmel Medical College at Thomas Jefferson University. Dr. Kaltenbach is an internationally recognized expert in the field of maternal addiction and has published extensively on the management of opioid dependence during pregnancy and neonatal abstinence syndrome (NAS); gender specific treatment for pregnant and parenting substance abusing women; and the effect of prenatal drug exposure on the perinatal and developmental outcome of children.

Amicus curiae **Mary Faith Marshall, PhD, FCCM,** is the Emily Davie and Joseph S. Kornfeld Professor and Director of the Program in Biomedical Ethics, and Professor of Public Health Sciences at the University of Virginia School of Medicine. Dr. Marshall is an elected fellow in the American College of Critical Care Medicine and is a former Fellow of the Kem1edy Institute of Ethics at Georgetown University. She is past-president of the American Association of Bioethics and Humanities and past-president of the American Association for Bioethics. Dr. Marshall was the chairperson of the National Human Research Protections Advisory Committee, DHHS, has been an on-site reviewer for the Office for Human Research Protections, and has served on several special emphasis panels regarding clinical trials and research ethics at the National Institutes of Health. She has testified before Congress on the subject of perinatal substance abuse. She sits on the Ethics Committees of the American College of Obstetricians and Gynecologists and the American College of Critical Care Medicine.

Amicus curiae **Anna Mastroianni, JD, MPH,** Professor of Law has substantial work experience and has produced many influential publications in health law and bioethics, with specific expertise in issues affecting women, reproduction and families. Formerly a practicing attorney in Washington, DC, she is a tenured faculty member of the University of Washington School of Law and has graduate faculty appointments in the School of Public Health and School of Medicine. She is also Affiliate Faculty at the Treuman Katz Center for Pediatric Bioethics at Seattle Children's Hospital. Her work with the Institute of Medicine is considered a seminal analysis of the medical, legal and ethical challenges surrounding the inclusion of women (particularly pregnant women and women of childbearing potential) in research. She is currently co-investigator on an NIH-funded research project evaluating the legal and ethical issues of including pregnant women in HIV research. In her capacity as Trustee of the Population Council, she oversees domestic and international activities involving health, reproduction and pregnancy. Professor Mastroianni teaches graduate courses in the Schools of Law, Medicine and Public Health and publishes and lectures internationally.

Amicus curiae **John J. McCarthy, MD, APBN, ABAM,** is the Medical Director of the BAART/Bi-Valley Medical Clinic, an outpatient addiction treatment program that specializes in the medical treatment of addiction to opiates, based in Carmichael, California. Dr. McCarthy also serves as an Assistant Professor of Psychiatry at the University of California, Davis. He has been published numerous times on the issues of opiate use impacts on maternal and perinatal health and appropriate treatment. He is Board certified in Psychiatry and Addiction Medicine.

Amicus curiae **Howard Minkoff, MD,** is the Chair of the Department of Obstetrics and Gynecology at Maimonides Medical Center, and a distinguished Professor of Obstetrics and Gynecology at the State University of NY Health Science Center at Brooklyn. He was a member of the Ethics Committee of the American College of Obstetricians and Gynecologists, is currently a member of the Committee on Obstetrics Practice, he sits on the editorial board or is an editorial consultant to almost all of the most prominent medical journals, has authored hundreds of articles, and is an internationally recognized expert on HIV disease and high risk pregnancy. Professor Minkoff has conducted years of grand scale research, supported by millions of dollars of federally funded grants, concerning the reproductive behaviors of low-income women, many with

drug abuse problems. Through his work with these women, he has developed widely adopted treatment protocols and ethical guidelines. Professor Minkoff brings his wealth of knowledge to this Court to ensure that it understands that punitive measures, including criminal prosecutions, of pregnant women with drug abuse problems will harm both maternal and child health.

Amicus curiae **Ellen Morehouse** is Executive Director of Student Assistance Services, and a licensed clinical social worker and certified alcohol and substance abuse counselor who has spent the last 30 years working to prevent and treat substance abuse.

Amicus curiae **Daniel R. Neuspiel, MD, MPH,** is Director of Ambulatory Pediatrics at Levine Children's Hospital and Clinical Professor of Pediatrics at University of North Carolina School of Medicine in Charlotte, NC. As a pediatrician, he has cared for hundreds of drug-affected infants and children, has published research on the impact of maternal substance use and abuse on infants, and has lectured widely as an expert on this topic.

Amicus curiae **Robert G. Newman, MD, MPH,** was until January 2001, President and CEO of Continuum Health Partners, Inc., a $2.2 billion hospital network in New York City. Prior to the creation of Continuum in 1997 he was CEO of the Beth Israel Health Care System for 20 years. He is now President Emeritus of ,Continuum. For over 40 years Dr. Newman has played a major"role in planning and directing some of the largest addiction treatment programs in the world - including the New York City Methadone Maintenance and Ambulatory Detoxification Programs, which in the mid-1970s served some 33,000 patients annually. He has also been a strong addiction treatment advocate in Europe, Australia and Asia. Throughout his career he has championed the right of drug-dependent persons to treatment access and choice of provider, and the right to be cared for under the same conditions as apply to the management of all other chronic medical conditions.

Amicus curiae **Ronni Rittenhouse, PhD** has provided services to individuals and families with chemical dependency problems in the State of West Virginia since 1974. Dr. Rittenhouse runs a private practice that serves individuals and families with problems of chemical dependency in Wheeling, West Virginia. She is in charge of certification of addiction professionals in West Virginia for the West Virginia Certification Board for Addiction and Prevention Professionals. Dr. Rittenhouse provided testimony on the treatment needs of rural women to the U.S. House of Representatives Select Committee on Narcotics Abuse and Control.

Amicus curiae **Kelley Saia, MD** is Assistant professor of OB/GYN at Boston University School of Medicine and Director of Project RESPECT at Boston Medical Center. Project RESPECT is the Substance Use Disorder treatment clinic for pregnant women in Massachusetts. RESPECT has helped over 800 women over the last 15 years; currently we care for 125-150 pregnant women annually. We are a multidisciplinary group consisting of obstetricians, family medicine, psychiatry, addiction medicine and social work. In 2006, Dr. Saia began the first Obstetrician run buprenorphine program in the greater Boston area. She serves as a regional and national expert on caring for pregnant women with opioid use disorder.

Amicus curiae **Sharon Stancliff, MD, FAAFP,** is the Medical Director of the Harm Reduction Coalition. She oversees SKOOP, which provides overdose prevention services both directly in New York City and through education and capacity building nationally and internationally. She has been the Medical Director of a large methadone program and, as a Family Practitioner, she has provided prenatal care for many women including those in drug tratment. Dr. Stancliff also consults on drug related problems for the AIDS Institute, New York State Department of Health, and for several international organizations.

Amicus curiae **Zachary Talbott MS, CMA,** is a certified MAT patient advocate and director of the Southeastern chapter of the National Alliance for Medication Assisted Recovery and Administrator for the SAMHSA-funded MARS Peer Recovery Network. Zach brings to this case a passion about criminal justice issues and reform, gender equality, and reproductive freedom in addition to evidence based medical treatments for substance use disorders.

Amicus curiae **Bruce Trigg, MD,** was, until 2011, the medical director of the Sexually Transmitted Disease program for Regions 1 and 3 of the New Mexico Department of Health. He also served as medical director of a public health program that offers reproductive and infectious disease programs at the Bernalillo County Metropolitan Detention Center, in Albuquerque, NM. For 20 years Dr. Trigg provided clinical care to patients as part of the Milagro Program, for pregnant women who use drugs, at UNM Health Sciences Center. He is currently a Clinical Assistant Professor in the Department of Pediatrics at UNM and on the faculty of the Adolescent Reproductive and Sexual Health Education Project (ARSHEP) of Physicians for Reproductive Health. Since 2011, Dr. Trigg has been a clinician in Opioid Treatment Programs in Albuquerque and Santa Fe, NM where he treats patients with methadone and buprenorphine. Dr. Trigg attended the George Washington University School of Medicine in Washington, DC. He did his residency in pediatrics at the Albert Einstein College of Medicine in NYC and at the UNM School of Medicine. Dr. Trigg served three years with the US Public Health Service in the Indian Health Service in Native American communities in NM and AZ.

Amicus curiae **Michael Vernon, PhD, HCLD, ELD,** is a Professor and the Chairman of Obstetrics/Gynecology at West Virginia University. He has published over 125 peer-reviewed papers, abstracts and book chapters, and has given plenary lectures to scientific societies in the US, Europe, Asia and South America. He has also co-authored a best-selling lay book, '*Endometriosis: A Key to Healing Through Nutrition*' by HarperCollins Books, 1999 and 2002. Dr. Vernon has been an Andrologist and Embryologist for over 20 years with an extensive background in Reproductive Physiology and IVF. He was part of the research team in the 1970's at the Wisconsin Primate Center that successfully performed the first IVF in the rhesus monkey.

Amicus curiae **Linda L.M. Worley, MD,** former professor of Psychiatry with a secondary appointment in Obstetrics and Gynecology in the College of Medicine at the University of Arkansas for Medical Sciences (UAMS) is an Adjunct Professor of Medicine at the Vanderbilt School of Medicine. She is a board certified Psychiatrist with sub-specialization in Psychosomatic Medicine and is the Immediate Past President of the Academy of Psychosomatic Medicine. She

received the American Psychiatric Association Gold Award for directing a model program for the nation for addiction treatment for women with their children.

Amicus curiae **Tricia E. Wright, MD, MS, FACOG, Diplomate ABAM,** is an assistant professor of Obstetrics, Gynecology at the University of Hawaii John A. Burns School of Medicine and the founder, former medical director, and now Women's Health Liaison of the PATH Clinic, an outreach clinic of Waikiki Health Center, which provides prenatal, postpartum and family planning to women with a history of substance use disorders. She is board certified in both OB/Gyn and Addiction Medicine and a Fellow of the American College of Obstetricians and Gynecologists. She specializes in taking care of pregnant women with substance use disorders and psychiatric illness. She won funding approval in 2006 from the Hawaii legislature to start the first perinatal clinic for women with substance use issues in the state. Her research interests include substance use disorders among pregnant women, including barriers to family planning, best practices for treatment, and the effects of methamphetamine and tobacco on the placenta.

Amicus curiae **Jessica Young, MD, MPH,** is an assistant professor at the Vanderbilt University School of Medicine in the department of Obstetrics and Gynecology. She founded the Obstetric Drug Dependency Clinic in 2011 which integrates prenatal care with addiction treatment.

Amicus curiae **Sherri Young, DO, FAAFP,** is the Chair of the Government Relations Committee for the West Virginia State Medical Association. She is a 2003 Graduate of WVSOM and currently serves as the Medical Director of the University of Charleston Physician Assistant Program.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Brief of Amici Curiae on the following by placing a copy of same in U.S. Mail, postage prepaid and properly addressed on this, the _____ day of May, 2015:

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