### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

#### UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

### LACEY WELD,

### **Defendant-Appellant**

### ON APPEAL FROM THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

AMICUS CURIAE BRIEF OF MEDICAL AND PUBLIC HEALTH, REPRODUCTIVE JUSTICE, AND CRIMINAL JUSTICE SYSTEM REFORM EXPERTS AND ORGANIZATIONS IN SUPPORT OF THE APPELLANT AND URGING RESENTENCING

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#### INTEREST OF AMICI CURIAE

Amici are 100 organizations and individual experts in public health, maternal, fetal, and child health, addiction treatment, reproductive justice, and criminal justice system reform, who urge this Court to reverse the federal district court's decision enhancing Lacey Weld's sentence because she was pregnant when she committed a crime. As amici demonstrate below, neither the Constitution nor any state interest is served by singling out pregnant women for unique and harsher criminal penalties. Statements of interest of amici are set out in the Appendix.

#### SUMMARY OF ARGUMENT

Enhancing a woman's sentence because she was pregnant when she committed a crime is not permissible under the Federal Sentencing Guidelines and infringes on constitutional guarantees of due process and liberty. It is also profoundly discriminatory and violates principles of equal protection by subjecting women to separate, unequal, and harsher penalties than other persons. Becoming pregnant and either continuing or terminating a pregnancy is a fundamental right for which no person may be subject to punishment directly or through enhanced sentencing.

The government may not abridge fundamental constitutional rights without compelling justification, narrowly tailored to advance the asserted interests. But enhanced penalties for women who become pregnant and allegedly put those

pregnancies at risk cannot even meet the lowest standard of constitutional scrutiny because, as *amici* explain below, such penalties undermine maternal, fetal, and child health, and are based on assumptions about pregnancy and risks of harm that are medically inaccurate and constitutionally impermissible. Accordingly, this Court should vacate Ms. Weld's sentence and remand for appropriate resentencing.

#### **ARGUMENT**

The Federal Sentencing Guidelines under which the district court enhanced Ms. Weld's sentence require that the offense create "a substantial risk of harm to the life of a minor." U.S.S.G. § 2D1.1(b)(13)(D). As defined by the Guidelines, a minor is "an individual who had not attained the age of 18 years." U.S.S.G. § 2A3.1. Because the statute does not define the term "minor" to include fertilized eggs, embryos, or fetuses, and does not state that women may be subject to heightened penalties if they are pregnant at the time they commit a crime, the six-level sentencing enhancement was inappropriately applied to Ms. Weld.

Even if the language of the statute were ambiguous, however, judicially expanding U.S.S.G. § 2A3.1 and U.S.S.G. § 2D1.1(b)(13)(D) to permit enhanced penalties under the circumstances of this case—or against any pregnant woman whose criminal conduct allegedly created a "substantial risk of harm" to the fertilized egg, embryo, or fetus she carries—would render the Federal Sentencing Guidelines unconstitutional. Considering that a pregnant woman's every action,

inaction, circumstance, or experience can influence fetal and child health, the basis upon which pregnant women could receive sentence enhancements would be virtually limitless and would violate constitutional guarantees of due process, liberty, and equal protection of the law.

# I. Ex-Post-Facto Judicial Decisions and Sentencing Based on Unreliable Information Violate The Fourteenth Amendment's Due Process Clause.

When deciding to cooperate with the federal government and plead guilty to conspiracy to manufacture methamphetamine, Ms. Weld had no notice that she could face additional jail time pursuant to U.S.S.G. § 2D1.1(b)(13)(D) for being pregnant at the time she committed that crime. Moreover, despite numerous objections from her counsel, the district court considered, and ultimately accepted, information that lacked "sufficient indicia of reliability" for resolving disputed facts important to the sentencing decision. U.S.S.G. § 6A1.3(a). Lack of notice and unreliable information constitute independent violations of due process and grounds for reversal.

### A. The enhanced sentence was an *ex-post-facto* judicial decision.

It is well established that "the *Ex Post Facto* and Due Process Clauses [are] co-extensive." *Ruhlman v. Brunsman*, 664 F.3d 615, 620 (6th Cir. 2011); *see also Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964). Therefore, "limitations on *ex post facto* judicial decisionmaking are inherent in the notion of due process." *Rogers v. Tennessee*, 532 U.S. 451, 456 (2001).

Nothing in the plain language of the sentencing guidelines, nor any previous federal judicial interpretation of U.S.S.G. § 2D1.1(b)(13)(D), would have provided Ms. Weld the notice required by the constitutional guarantee of due process. The statute does not mention pregnancy, drug use, or addiction—none of which together, or independently, are crimes under federal<sup>1</sup> or Tennessee law.<sup>2</sup>

By attaching criminal penalties to non-criminal conduct and status, the district court's interpretation of the sentencing guidelines and decision to impose additional punishment violates "core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously has been innocent conduct." *Rogers v. Tennessee*, 532 U.S. at 459; *see also United States v. Barton*, 455 F.3d 649, 654 (6th Cir. 2006) ("[W]hen addressing *ex post facto*-type due process concerns, questions of notice, foreseeability, and fair warning are paramount.").<sup>3</sup>

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<sup>&</sup>lt;sup>1</sup> Federal law punishes drug possession, not use, which is based in part on the recognition that some use is the result of addiction, a health condition over which people have limited control. *See, e.g., Robinson v. California*, 370 U.S. 660 (1962). <sup>2</sup> Tenn. Code Ann. § 39-13-107 permits prosecution of pregnant women for assaultive offenses. Among the contexts in which this law can apply is if an infant is "born addicted to or harmed" as a result of the "illegal use" of a "narcotic drug." This law did not go into effect until July 1, 2014, and methamphetamine is not defined in Tennessee law as a narcotic. Tenn. Code Ann. § 39-17-402.

<sup>&</sup>lt;sup>3</sup> Cf. Judgment, United States v. Tuleh, No. 09-1708 (1st Cir. June 24, 2009) (federal appeals court vacated district court's enhanced sentence that required a pregnant woman to remain in prison allegedly to protect her fetus from perinatal

## B. Key factors important to the sentencing decision lacked sufficient indicia of reliability.

Although sentencing hearings are not subject to the Federal Rules of Evidence, the Federal Sentencing Guidelines establish a minimum standard for the admissibility of evidence in such proceedings. U.S.S.G. § 6A1.3(a) states in part:

In resolving any dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has *sufficient indicia of reliability* to support its probable accuracy.

(emphasis added). In considering this standard, this Court explained, "due process requires that *some* evidentiary basis beyond mere allegation in an indictment be presented to support consideration of such conduct as relevant to sentencing." *United States v. Smith*, 887 F.2d 104, 108 (6th Cir. 1992). Despite this "relatively low hurdle," *United States v. Greene*, 71 F.3d 232, 235 (6th Cir. 1995), much of the evidence considered during the sentencing hearing failed to meet this threshold.

For example, during the sentencing hearing, the U.S. Attorney referred to newborns as "addicted" 13 times, a medical conclusion the district court

HIV transmission; remanded for appropriate resentencing). *See also*, Judy Harrison, *Judge resentences HIV-positive woman to time served*, BANGOR DAILY NEWS, Aug. 4, 2009, http://bangordailynews.com/2009/08/04/news/judge-resentences-hivpositive-woman-to-time-served/.

<sup>&</sup>lt;sup>4</sup> Transcript of Sentencing Hearing Part I at 53, 66, 73, 80, 82, 83, 94, 111, 123, *United States v. Lacey Weld*, 3-13-CR-84 (E.D. Tenn. July 11, 2014) (hereinafter "TSHI").

apparently accepted as true.<sup>5</sup> But, as national and international experts have explained, "[a]ddiction is a technical term that refers to compulsive behavior that continues in spite of adverse consequences. In fact, babies cannot be born 'addicted' to anything regardless of drug test results or indicia of physical dependence." Moreover, none of the testimony at Ms. Weld's sentencing hearing about the risks of harm from prenatal drug exposure, risks of harm from being in a potentially explosive location, and causes of newborn health diagnoses, namely, Neonatal Abstinence Syndrome (NAS), had any evidentiary basis whatsoever.

Despite the unreliable testimony, and notwithstanding numerous objections during the sentencing hearing, the district court accepted claims about NAS that are patently wrong. As Ms. Weld's counsel tried to point out, NAS is *not* caused by methamphetamine. Rather, it is a group of side effects that may present in some newborns that have been prenatally exposed to opioids.<sup>7</sup> Because NAS is a treatable and transitory condition that has not been associated with any long-term

<sup>&</sup>lt;sup>5</sup> The district court stated that "the baby was born addicted to methamphetamine," despite the medical impossibility of this conclusion. TSHI at 116.

<sup>&</sup>lt;sup>6</sup> Robert G. Newman, MD, MPH, et al., *Open Letter to the Media and Policy Makers Regarding Alarmist and Inaccurate Reporting on Prescription Opioid Use by Pregnant Women* (Mar. 11, 2013), http://bit.ly/OpioidLetter.

Neonatal Abstinence Syndrome is "an expected and treatable condition that follows prenatal exposure" to opioids, which include prescribed medication for managing chronic pain and treating addiction, as well as heroin. American College of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Opioid Abuse, Dependence, and Addiction in Pregnancy*, Committee Opinion No. 524 (May 2012).

adverse effects,<sup>8</sup> treating NAS as "a substantial risk of harm to the life of a minor," U.S.S.G. § 2D1.1(b)(13)(D) is grossly inaccurate and in direct conflict with public information provided by the U.S. government.<sup>9</sup>

Further, the district court's decision was based on common but medically and scientifically inaccurate assumptions about the effects of drug use during pregnancy. <sup>10</sup> Indeed, the factual context for the rulings in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* make clear that seemingly obvious links between a drug women took while pregnant, and serious, irreversible harm to the children born to

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<sup>&</sup>lt;sup>8</sup> See Alex Baldacchino, et al., Neurobehavioral consequences of chronic intrauterine opioid exposure in infants and preschool children: a systematic review and meta-analysis, 14 BMC PSYCHIATRY 104 (Apr. 2014) (concluding that children prenatally exposed to opioids "experienced no significant impairment in neurobehavioral outcomes when compared to non-exposed peers"); Walter K. Kraft & John N. van den Anker, Pharmacological Management of the Opioid Neonatal Abstinence Syndrome, 59:5 PEDIATRIC CLINICS OF N. Am. 1147 (2012) ("Importantly, there is no evidence of long term adverse outcomes in children treated with pharmacological agents vs. infants who do not require treatment for NAS . . . .").

<sup>&</sup>lt;sup>9</sup> Substance Abuse & Mental Health Servs. Admin., U.S. Dep't of Health & Human Servs., Pub. No. [SMA] 06-4124, *Methadone Treatment for Pregnant Women* (2006) (such treatment can cause NAS and "... is safe for the baby"). <sup>10</sup> Assumptions about risks of harm from prenatal exposure to certain drugs have been exaggerated and are overwhelmingly wrong. *See, e.g.*, American College of Obstetricians & Gynecologists, *Information about Methamphetamine Use in Pregnancy* (Mar. 2006) ("the effects of maternal methamphetamine use cannot be separated from other factors" and there "is no syndrome or disorder that can specifically be identified for babies who were exposed in utero to methamphetamine"); Deborah Frank, et al., *Growth, Development, and Behavior in Early Childhood Following Prenatal Cocaine Exposure: A Systematic Review*, 285 JAMA 1613 (2001) ("[T]here is no convincing evidence that prenatal cocaine exposure is associated with any developmental toxicity difference in severity, scope, or kind from the sequelae of many other risk factors.").

those women, cannot be assumed. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); 43 F.3d 1311 (9th Cir. 1995) (finding a lack of medical and scientific basis for a claim that a pharmaceutical drug taken during pregnancy had in fact been the cause of limb malformations in the child plaintiffs). As this Court held in *United States v. Meacham*, 27 F.3d 214 (6th Cir. 1994), even though sufficient indicia of reliability is a low standard, it nonetheless prohibits the kind of speculative findings relied upon by the district court in this case.

II. Enhancing a Sentence on the Basis of Pregnancy Punishes Women for Carrying Their Pregnancies to Term and Is Unconstitutional Under the Due Process Clause of the Fourteenth Amendment.

The Fourteenth Amendment protects a person's right to become pregnant, seek to carry a pregnancy to term without penalty, or terminate a pregnancy without undue burden. *See Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977). It protects a person's right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Lawrence v. Texas*, 539 U.S. 558, 565 (2003) (citing *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972)). State actions that impose burdens on such a fundamental right cannot be justified absent a compelling state interest. *Skinner v. Oklahoma*, 316 U.S. 535 (1952).

In Cleveland Board of Educ. v. LaFleur, 414 U.S. 632 (1974), and Turner v. Dep't of Emp't Sec., 423 U.S. 44 (1975), the Supreme Court rejected policies that

presumed women were incapable of working past a certain point in their pregnancies. Several federal appellate courts followed suit. *See, e.g., Int'l Union, UAW v. Ind. Emp't Sec.*, 600 F.2d 118 (7th Cir. 1979) (statutes denying unemployment compensation to women willing and able to work, but denied the opportunity to do so because of pregnancy, violated the Due Process Clause); *Crawford v. Cushman*, 531 F.2d 1114 (2nd Cir. 1976) (Marine Corps regulation mandating discharge for pregnancy unconstitutionally restricted the exercise of personal freedoms protected by the Fourteenth Amendment).

Whether what was at stake was a restrictive regulation, denied work opportunity, or heightened penalty, the women in these cases were subjected to separate and unequal laws solely because they were pregnant, implicating the same constitutional concerns that are at the very foundation of substantive due process jurisprudence. Here, the *ex-post-facto* judicial expansion of U.S.S.G. § 2D1.1(b)(13)(D) was based on Ms. Weld's decision to continue her pregnancy to term. Indeed, Ms. Weld could have avoided the enhanced sentence *only* by terminating her pregnancy and giving up her fundamental right to bear this child.<sup>11</sup>

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<sup>&</sup>lt;sup>11</sup> The United States' explanation for the sentencing enhancement specifically references giving birth as part of the justification for seeking the heightened penalty, stating that the "enhancement is based on this defendant *giving birth to* a drug addicted baby, the baby whose meconium tested positive for methamphetamine." TSHI at 94 (emphasis added).

"[W]here a decision as fundamental as whether to bear or beget a child is involved, regulations imposing a burden on it may be justified only by compelling states interests, and must be narrowly drawn to express only those interests." *Carey v. Population Servs. Int'l*, 431 U.S. 678, 686 (1977). In this case, the sentence enhancement serves no recognized or even conceivable government interest, and thus, fails even rational basis review.

## A. Punitive responses to drug use during pregnancy undermine maternal, fetal, and child health.

For more than two decades, all major U.S. public health and medical organizations have taken an unequivocal stance against criminal responses to a woman's pregnancy and the actions, inactions, or circumstances that may (or may not) affect pregnancy outcome. Many of these organizations developed specific responses in the wake of punitive state actions against pregnant women. In June 1990, the American Medical Association ("AMA") issued a report, "Legal Interventions During Pregnancy," in which it rejected any role for criminal sanctions against pregnant women. Similarly, in a series of statements, the American College of Obstetricians and Gynecologists ("ACOG") strongly opposed criminal sanctions against pregnant women. In its analysis, "Maternal Decision Making, Ethics, and the Law," the ACOG Committee on Ethics concluded,

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<sup>&</sup>lt;sup>12</sup> Helen Cole, for the American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663, 2664 (1990).

<sup>13</sup> *Id.* at 2670

"pregnant women should not be punished for adverse perinatal outcomes. The relationship between maternal behavior and perinatal outcome is not fully understood, and punitive approaches threaten to dissuade pregnant women from seeking health care and ultimately undermine the health of pregnant women and their fetuses."

Other health care associations share the views of ACOG and the AMA. The American Academy of Pediatrics warns, "punitive measures taken toward pregnant women, such as criminal prosecution and incarceration, have no proven benefits for infant health." 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. 

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." And according to the American Psychological Association, "no

<sup>&</sup>lt;sup>14</sup> American College of Obstetricians and Gynecologists, Comm. on Ethics, *Maternal Decision Making, Ethics, and the Law*, 106 OBSTETRICS & GYNECOLOGY 1127, 1135 (2005).

<sup>&</sup>lt;sup>15</sup> American Academy of Pediatrics, Comm. on Substance Abuse, *Drug Exposed Infants*, 86 PEDIATRICS 639, 641 (1990).

<sup>&</sup>lt;sup>16</sup> American Public Health Association, *Illicit Drug Use by Pregnant Women*, Pol'y No. 9020 (1990).

<sup>&</sup>lt;sup>17</sup> American Nurses Association, *Position Statement on Opposition to Criminal 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).

punitive action should be taken against women on the basis of behaviors that may harm a developing fetus."<sup>18</sup>

Maternal, fetal, and child health are significant public health concerns, and these position statements are informed by the understanding that punitive responses to drug use during pregnancy do nothing to further public health. Rather, they undermine maternal, fetal, and child health by deterring women from seeking care and speaking openly to their health providers if they do.<sup>19</sup> These responses also create an incentive for women struggling with addiction to terminate wanted pregnancies rather than face arrest and prosecution upon giving birth.<sup>20</sup> None of these outcomes advance state interests in maternal, fetal, and child health.

# B. Enhanced penalties misunderstand the nature of addiction and are contrary to public health and scientific research.

Among the reasons for the sentencing enhancement in this case was Ms. Weld's methamphetamine use, which, as indicated at her sentencing hearing, reflected long-term addiction. Although the state has an "interest in preventing drug abuse," *Bloch v. Ribar*, 156 F.3d 673, 684 (6th Cir. 1998) (citing *Whalen v.* 

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<sup>&</sup>lt;sup>18</sup> American Psychological Association, *Resolution on Substance Abuse by Pregnant Women* (Aug. 1991). *See also* American Psychiatric Association, *Position Statement on Care of Pregnant and Newly Delivered Women Addicts*, APA Document Reference No. 200101 (Mar. 2001) (opposing prosecution based on drug use during pregnancy and urging treatment as the appropriate response).

<sup>&</sup>lt;sup>19</sup> See supra notes 12–18 and accompanying text.

<sup>&</sup>lt;sup>20</sup> M.L. Poland et al., *Punishing pregnant drug users: Enhancing the flight from care*, 31 DRUG ALCOHOL DEPEND 199 (1993).

*Roe*, 429 U.S. 589, 598–604 (1977)), that interest does not provide the authority to criminalize addiction. *Robinson v. California*, 370 U.S. 660 (1962). As recognized by medical organizations and government agencies, addiction is not a failure of willpower, but rather, has complex environmental and hereditary dimensions and "is subject to [treatment] in the same fashion as hypertension and diabetes."

As a matter of both law and science, addiction is characterized by compulsion and inability to abstain.<sup>22</sup> It is therefore inaccurate and callous to suggest, as the United States did, that refraining from drug use is a simple matter of choice,<sup>23</sup> when achieving long-term abstinence can be extraordinarily difficult and often requires appropriate treatment and support.<sup>24</sup> This is especially true for

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<sup>24</sup> See supra note 22.

<sup>&</sup>lt;sup>21</sup> American College of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, Committee Opinion No. 473 (Jan. 2011) ("Addiction is a chronic, relapsing biological and behavioral disorder with genetic components."); Office of Nat'l Drug Control Policy, *2013 National Drug Control Strategy*, http://www.whitehouse.gov/ondcp/national-drug-control-strategy ("addiction is not a moral failing but rather a disease of the brain that can be prevented and treated"). <sup>22</sup> American Soc'y of Addiction Medicine, Definition of Addiction (Apr. 19, 2011), http://www.asam.org/for-the-public/definition-of-addiction (addiction is characterized by "inability to consistently abstain, impairment in behavioral control, craving, and diminished recognition of significant problems with one's behaviors. . . Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death."); 42 U.S.C. § 201(q) (a drug-dependent person is someone who is using a controlled substance "and who is in a state of psychic or physical dependence, or both").

<sup>&</sup>lt;sup>23</sup> "All the while this defendant knew she was pregnant . . . [and] she knew [drug withdrawal after birth] was a possibility because it happened before. This isn't something this defendant was ignorant of." TSHI at 99–100.

someone who has suffered the kind of hardships that Ms. Weld has, including the death of her mother when she was just 12 years old, sexual abuse from the age of 8, and becoming addicted by the age of 14.<sup>25</sup>

Because of the nature of addiction, it is clear that punitive responses are neither a deterrent nor a cure. Therefore, creating special penalties for women who are pregnant and struggling with addiction is not even rational, let alone compelling.

# III. Sentence Enhancements That Discriminate on the Basis of Pregnancy Violate the Fourteenth Amendment's Equal Protection Clause.

The multiple due process violations of this sentence enhancement are sufficient to require reversal. However, *amici* also bring the gender discrimination inherent in penalizing women because of pregnancy to this Court's attention. Through much of U.S. history, it has been women's capacity for pregnancy and childbirth that has been used to undermine women's status as equal rights-holders, including justifying their exclusion from public life (*Hoyt v. Florida*, 368 U.S. 57 (1961) (upholding law limiting jury duty to men)), occupations (*Goesaert v. Cleary*, 335 U.S. 464 (1948) (permitting state to deny women bartending licenses unless a male relative owned the establishment in which they worked)), and professions (*Bradwell v. State*, 83 U.S. 130 (1873) (upholding state's refusal to

<sup>&</sup>lt;sup>25</sup> Transcript of Sentencing Hearing Part II at 19, *United States v. Lacey Weld*, 3-13-CR-84 (E.D. Tenn. July 15, 2014) (hereinafter, "TSHII").

allow women a license to practice law)). The Supreme Court's reasoning in *Muller v. Oregon*, 208 U.S. 412, 421 (1908), a case upholding a statute limiting women, but not men, to ten hour work days, amply illustrates this discrimination: "[A]s healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."

In spite of that deplorable history, U.S. courts have made significant jurisprudential changes, and today, the Equal Protection Clause prohibits the use of gender stereotypes, generalizations regarding women's abilities or characteristics, and entrenched perceptions of gender roles as the basis for discriminatory laws.

See United States v. Virginia, 518 U.S. 515 (1996); Frontiero v. Richardson, 411

U.S. 677 (1973); Reed v. Reed, 404 U.S. 71 (1971); Cmtys. for Equity v. MI High

School Athletic Ass'n, 459 F.3d 676 (6th Cir. 2006).

Still, the impulse to predicate women's legal status on "ideology about women's roles . . . when they are mothers or mothers-to-be" has been difficult to quell, <sup>26</sup> and this sentencing enhancement represents an unfortunate return to the imposition of discriminatory penalties on women because of their capacity for pregnancy and motherhood.

<sup>26</sup> See Nevada Dep't of Human Res. v. Hibbs, 538 U.S. 721, 736 (2003).

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# A. Women's capacity for pregnancy should not subject them to separate, unequal, and harsher penalties than other persons.

Interpreting the term "child" in U.S.S.G. § 2D1.1(b)(13)(D) to include fertilized eggs, embryos, and fetuses would subject women to separate, unequal, and harsher penalties than other persons. It would also turn non-criminal actions into crimes if performed by a pregnant woman.

As previously explained, drug use is not a crime under Tennessee or federal law. Nevertheless, the United States stressed that the "enhancement is based on this defendant giving birth to a . . . baby whose meconium tested positive for methamphetamine." TSHI at 94. The district court also noted, "the defendant has admitted and acknowledged the use of methamphetamine for her personal use," and "the Court finds the defendant's use of methamphetamine during her pregnancy . . . was relevant conduct and may be considered in determining whether to apply the enhancement." TSHII at 16.

Therefore, by considering Ms. Weld's drug use in the sentencing hearing, the district court subjected her to an additional punishment that a male drug user will never—and as far as *amici* have found, has never—faced. In doing so, this decision effectively criminalized drug use for one class of persons: pregnant women.

## B. This enhanced sentence is rooted in the discriminatory misperception that women are solely responsible for fetal health.

Ms. Weld as the only person for whom the United States sought an enhanced sentence for creating "a substantial risk of harm to the life of a minor." The sentencing hearing transcript repeatedly mentions that the environment was "volatile," TSHI at 17, 44, 50, 52, that "fumes" were present, TSHI at 30, 95, 115, 117, 119, and that "explosions" could occur. TSHI at 17, 27, 28, 42, 45, 51, 52, 98, 99, 114, 117, 119. Despite the fact that every person involved in the conspiracy was responsible for creating the "volatile" environment, however, none of the men who were part of the same conspiracy faced this sentencing enhancement. This differential treatment not only constitutes a clear equal protection violation, but it also rests on and reinforces the same gender stereotypes that for generations hindered opportunity, equality, and full citizenship for women. See, e.g., Int'l Union, UAW v. Johnson Controls, Inc., 499 U.S. 187, 205 (1991) (rejecting so called workplace "fetal protection policies" and noting that "[e]mployment late in pregnancy often imposes risks on the unborn child"). A return to policies that penalize women in the name of "fetal protection" has consequences far beyond this case, as women live and work in a host of jobs and environments that may have deleterious effects on their reproductive health. To name just a few examples, women work as farmers exposed to agricultural pesticides, as employees in hair

and nail salons, and as domestic workers who use home and industrial cleaning products.<sup>27</sup>

Moreover, in support of the sentencing enhancement against Ms. Weld, the United States argued, "[i]f there was an explosion or something happened with that lab and that baby, a viable baby, . . . would have been murdered." TSHI at 99. This stigmatizing characterization of pregnancy loss as murder (or attempted murder) that deserves punishment directly or, as in this case, through enhanced penalties, is based on impermissible gender stereotypes that wrongly presume women alone are responsible for pregnancy outcomes.<sup>28</sup>

It is conservatively estimated that 15-20% of all pregnancies end in miscarriage, <sup>29</sup> and approximately 26,000 pregnancies end in stillbirth every year. <sup>30</sup>

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<sup>&</sup>lt;sup>27</sup> Reece Rushing, *Reproductive Roulette: Declining Reproductive Health, Dangerous Chemicals, and a New Way Forward*, CENTER FOR AMERICAN PROGRESS (July 21, 2009), http://cdn.americanprogress.org/wp-content/uploads/issues/2009/07/pdf/reproductive\_roulette.pdf; American College of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women & American Soc'y for Reproductive Med. Practice Comm., *Exposure to Toxic Environmental Agents* (Oct. 2013) (stating that the "environmental drivers of reproductive health are many and varied").

<sup>&</sup>lt;sup>28</sup> Cynthia Daniels, *Fathers, Mothers, and Fetal Harm: Rethinking Gender Difference and Reproductive Responsibility*, in Fetal Subjects, Feminist Positions, 83 (Lynn M. Morgan & Meredith W. Michaels eds., 1999) (collecting studies on male exposure to occupational, behavioral, and environmental factors). <sup>29</sup> Raj Rai & Lesley Regan, *Recurrent Miscarriage*, 368 Lancet 601 (2006); March of Dimes, Pregnancy Loss, www.marchofdimes.org/loss/miscarriage.aspx#. <sup>30</sup> *See* R.L. Goldenberg, et al., *Stillbirth: A Review*, 16 Journal of Maternal-Fetal & Neonatal Medicine 79 (2004); Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 Am. J. of Obstetrics & Gynecology 1923, 1924 (March 2005).

The characterization of pregnancy loss as murder, if taken seriously, would require considering all of these women, and especially those who work in such jobs as firefighting or in any job that refuses to accommodate their pregnancy-related health needs, <sup>31</sup> as potential murderers.

Holding only pregnant women legally accountable for the risks to and/or the actual outcomes of their pregnancies would reestablish a second-class status for women. It would require them first to understand, and then take steps to address the environmental, medical, and countless other conditions that may potentially be harmful during pregnancy. It would also obligate all fertile women to know at all times if they are pregnant, and may therefore be subject to unique, gender-based penalties. Every aspect of the sentencing enhancement in this case hearkens back to the discredited and unconstitutional reasoning in *Bradwell*, *Muller*, and other cases that subjected women to discriminatory treatment because of their capacity to become pregnant.

## C. No important state interest justifies this discriminatory sentencing enhancement.

Under our modern constitutional framework, laws that burden women cannot be justified unless they serve "important governmental interests" and "the discriminatory means employed [are] substantially related to the achievement of

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<sup>&</sup>lt;sup>31</sup> Young v. United Postal Service, Inc., 707 F.3d 437 (4th Cir. 2013), cert. granted, 81 U.S.L.W. 3602 (U.S. July 1, 2014) (No. 12-1226).

those objectives." *United States v. Virginia*, 518 U.S. 515, 531 (1996) (citation omitted). Here, the state cannot proffer any important, or even rational, basis for its interpretation of the Federal Sentencing Guidelines. As explained above, selectively burdening women based on their reproductive capacity does not serve any state interest, as responses like this do not protect maternal, fetal, and child health, but have precisely the opposite effect, by discouraging women from seeking prenatal care and carrying wanted pregnancies to term. Accordingly, the district court's decision enhancing Ms. Weld's sentence is unconstitutional.

#### **CONCLUSION**

Subjecting women who become pregnant to separate, unequal, and harsher penalties than other persons violates constitutional guarantees of due process, liberty, and equal protection of the law. Such punitive responses by the government are done in service of no rationale, let alone an important or compelling one, and actually undermine any state interests in improving maternal, fetal, and child health. Thus, *amici curiae* respectfully request that this Court vacate Ms. Weld's enhanced sentence and remand for appropriate resentencing.

Dated: December 8, 2014

Respectfully submitted,

s/ Kylee J. Sunderlin
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#### APPENDIX – LIST OF AMICI

### **Organizations**

National Advocates for Pregnant Women ("NAPW") is a non-profit reproductive justice organization that advocates for the human and civil rights, health, and welfare of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable to state control and punishment. Through litigation, representation of leading medical and public health organizations and experts as amicus, and through organizing and public education, NAPW works to ensure that women do not lose their constitutional, civil, and human rights as a result of pregnancy. The organization also conducts research, and has published a peer-reviewed study on prosecutions of and forced medical interventions on pregnant women. NAPW believes that health and welfare problems experienced by women during pregnancy should be addressed as health issues, not as crime, and promotes policies that actually protect maternal, fetal, and child health.

Abortion Care Network ("ACN") is the leading national organization working to de-stigmatize and normalize the experiences of women who undergo an abortion. ACN offers support and training to the abortion care community, especially to counselors, advocates, clinic administrators and medical support staff, who care directly for women and their families. Founded in 2008 as a successor to the National Coalition of Abortion Providers, ACN has created a network of independent abortion providers, supportive allied organizations, and socially conscious individuals who are deeply invested in creating an environment where women who choose to have an abortion, and those that provide care, are no longer shamed for their choices. ACN reaches millions of women across the country through our members and through on-line venues, and seeks to help its patient-members fulfill all of their reproductive and parenting needs.

The American Civil Liberties Union Foundation ("ACLU") is a nationwide, non-partisan organization of more than 500,000 members dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Through its Reproductive Freedom Project, the ACLU has long fought to ensure pregnant women are accorded equal treatment under the law.

The American Civil Liberties Union Foundation of Tennessee ("ACLU-TN") is the local affiliate of the ACLU with members and supporters throughout Tennessee. ACLU-TN is committed to safeguard the constitutional rights of all

Tennesseans and to advocate for the equal treatment of pregnant women in Tennessee.

American Society of Addiction Medicine ("ASAM") is a professional society representing over 3,000 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 abuse 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.

**Ashley Rising** is a humanitarian organization whose focus is on the achievement of gender equality throughout the world. Ashley Rising's commitment is to a community in which the full worth of a woman is not simply acknowledged but actively supported by all segments of the community. The organization's aim is to support women-centered agencies and organizations that provide care for substance-using women, battered women, and/or homeless women.

Black Women Birthing Justice ("BWBJ") works to improve pregnancy and birthing experiences for Black women, including women who are particularly vulnerable due to their age, sexual or gender identity, economic status, or criminal justice involvement. BWBJ seeks to ensure that every woman has an empowering pregnancy and childbirth experience, free of unnecessary interventions. We also work to rebuild women's confidence in giving birth naturally, and to decrease maternal and infant mortality. We seek to achieve this through community-based research, public education and advocacy.

C.A.R.E. Alliance NW, Inc. ("C.A.R.E Alliance") provides professional advocacy, education and addition counseling services, with a special emphasis on maternal addiction. Specifically, this program offers a unique and fully integrated program for pregnant, postpartum and parenting women with substance use disorders which offers specialized treatment and recovery counseling services paired with pregnancy, birthing, and postpartum support through a doula with advanced clinical training. Patient advocacy and education includes basic childbirth education, pain management in recovery, clinical guidance

understanding and responding to Neonatal Abstinence Syndrome, 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. By providing this unique integrated model of care, C.A.R.E. Alliance seeks to reduce barriers to prenatal care for women with substance use disorders, increase access to compassionate care within existing systems of care, and provide comprehensive advocacy in setting which pregnant women with substance use disorders have often been poorly served.

California Coalition for Women Prisoners ("CCWP") is a grassroots social justice organization, with members inside and outside prison, that challenges the institutional violence imposed on women, transgender people, and communities of color by the prison industrial complex (PIC). We see the struggle for racial and gender justice as central to dismantling the PIC and we prioritize the leadership of the people, families, and communities most impacted in building this movement.

California Latinas for Reproductive Justice is a statewide organization committed to honoring the experiences of Latinas to uphold our dignity, our bodies, sexuality, and families. We build Latinas' power and cultivate leadership through community education, policy advocacy, and community-informed research to achieve reproductive justice. We do our work using reproductive justice framework that emphasizes the intersection with other social, economic and community-based issues that promote the social justice and human rights of Latina women and girls and the Latino/a community as a whole. In other words, we recognize that Latinas' access to culturally and linguistically appropriate health care, a living wage job, quality education, freedom from discrimination and violence, among many other issues that affect Latinas' daily lives, have a profound effect on Latinas' reproductive and sexual health, as well as our right to self-determination in all aspects of our lives.

The California Women's Law Center ("CWLC") is a statewide, non-profit law and policy center dedicated to advancing the civil rights of women and girls through impact litigation, advocacy and education. Since its inception in 1989, CWLC has placed an emphasis on eradicating all forms of gender discrimination and violence including advocating for the rights of pregnant and parenting women.

Californians United for a Responsible Budget is a statewide coalition of over 65 grassroots organizations working together to reduce the number of people in prisons and jails, reduce the number of prisons and jails in the state and fight expansions, and reinvest the saved resources in community alternatives and human

services. We advocate for a prioritization of alternatives to incarceration based in our understanding that the separation of folks from their loved ones, children, and families harms individuals and their communities. We know jails and prisons are not rehabilitative and believe they should not be framed as such; we recognize that voluntary treatment and services in ones own community leads to better outcomes for individuals, particularly for pregnant women and primary caregivers who need alternatives to imprisonment that keep their families together. As a coalition we amplify the work of community leaders and bridge movements for environmental, economic, social, racial and gender-based justice in California and across the nation.

The Carr Center for Reproductive Justice at NYU Law ("CCRJ") was established to conduct innovative research, provide legal services, promote dialogue and expand the academic discipline on reproductive justice issues. CCRJ's goal is to ensure justice and democracy for all.

The Center for Constitutional Rights ("CCR") is a national non-profit legal, educational and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law. Founded in 1966, CCR has litigated numerous landmark civil and human rights cases, and has a longstanding commitment to promoting and protecting reproductive rights and justice. In 1980, CCR challenged the restriction of poor women's right to federal Medicaid funding for abortion (the Hyde Amendment) before the United States Supreme Court in Harris v. McRae, 448 U.S. 297 (1980). In 1988, CCR litigated the landmark case, National Organization of Women v. Terry, 886 F.2d 1339 (2d Cir. 1989), establishing the constitutionality of "buffer zones" around abortion clinics to prevent the harassment and intimidation of people seeking medical services. And CCR successfully challenged the Food and Drug Administration's failure to approve the Morning-After Pill (also known as "emergency contraception" or "Plan B") for unrestricted over-the-counter access for all women in the U.S. regardless of age in *Tummino*, et al. v. von Eschenbach, No. 05-CV-366 (E.D.N.Y. 2009). Given CCR's origin, history, and purpose, and its longstanding commitment to protection of the Constitution, due process, equal protection of the law, and reproductive justice, the organization has a direct and significant interest in the outcome of this case.

Center on Reproductive Rights and Justice at Berkeley School of Law ("CRRJ") seeks to realize reproductive rights and advance reproductive justice by furthering scholarship, bolstering law and policy advocacy efforts, and influencing legal and social science discourse through innovative research, teaching, and

convenings. In essence, CRRJ propels policy solutions by connecting people and ideas across the academic-advocate divide. We believe all people deserve the social, economic, political, and legal conditions, capital, and control necessary to make genuine choices about reproduction – decisions that must be respected, supported, and treated with dignity.

Correctional Association of New York ("CA") is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the NY State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Utilizing a strategic model of research, policy analysis, prison monitoring, coalition building, leadership development and advocacy, the CA strives to make the administration of justice in New York State more fair, efficient and humane. The CA's three principal programs - the Prison Visiting Project, the Women in Prison Project and the Juvenile Justice Project - work to stop the ineffective use of incarceration to address social, economic and public health problems; advocate for humane prison conditions; empower people directly affected by incarceration to become leaders; and promote transparency and accountability in the criminal and juvenile justice systems. Created in 1991, the CA's Women in Prison Project works to reduce the use of incarceration for women, ensure that prison conditions for women are as humane and just as possible, and create a criminal justice system that treats women and all people with fairness, dignity and justice. Our work is guided by the principle that women most directly impacted by incarceration are the experts and have the right to be leaders in changing the punitive criminal justice policies that directly affect their lives.

The **Desiree Alliance** is a social justice organization that is led by current and former sex workers in coalition with health professionals, harm reductionists, social scientists, educators, and their supporting networks focused on building leadership, capacity-building, political advocacy, policy-making, organizing and constructive activism amongst sex workers so that they can work for sex workers' human, labor and civil rights. Ultimately, we work to eradicate barriers that prevent best practices for those impacted by criminalization. Incarcerating women who are pregnant furthers generational, systemic, and systematic failures that go beyond judicial rulings for women's autonomy of her reproductive choices. We stand in solidarity with Ms. Weld.

**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.

The Drug Policy Forum of Hawai'i ("DPFHI") is an organization that works to educate policymakers and the public about effective ways of addressing drug issues in Hawai'i with sensible and humane policies that reduce harm, expand treatment options, and adopt evidence-based practices while optimizing the use of scarce resources. DPFHI works to advance justice, compassion, and health in drug policy, and as such opposes unfair policies that would further the criminalization and stigmatization of people who use drugs.

**Families & Criminal Justice** ("FCJ") is a community service program dedicated to optimal health and development among the children of women involved in the criminal justice system. FCJ offers reproductive health, prenatal and infant/child development education and support services to pregnant prisoners and other incarcerated mothers, as well as home-based infant/child development services for formerly incarcerated mothers and their young children. FCJ believes that recent research demonstrates that mothers' interconception and prenatal health have powerful and lasting effects on infant and child development, so we work towards optimal reproductive health and reproductive freedom among mothers who receive our services, and support reproductive justice for all mothers.

Gender Justice is a non-profit law firm based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its mission, Gender Justice helps courts, employers, schools, and the public better understand the role that cognitive bias and unconscious stereotyping plays in perpetuating discrimination, and what can be done to limit their harmful effects and ensure equality of opportunity for all. As part of its impact litigation program, Gender Justice acts as counsel in cases involving gender equality in the Midwest region, including providing direct representation of pregnant employees facing discrimination in the workplace. Gender Justice also participates as *amicus curiae* 

in cases that have an impact in the region. The organization has an interest in protecting and enforcing women's legal rights in the workplace, and in the proper interpretation of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1979.

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.

**Healthy and Free Tennessee** ("HFTN") promotes sexual health and reproductive freedom in Tennessee by advancing policies and practices which recognize these elements as essential to the overall well being of our citizens. HFTN envisions a future where all Tennesseans are healthy, have control over their own health-related decisions, and have access to the resources they need to make informed choices about all facets of their health, without stigma or discrimination. HFTN works to ensure that all people in Tennessee are able to access a broad spectrum of resources and services to support their comprehensive sexual and reproductive health.

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.

International Centre for Science in Drug Policy 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.

**Justice Now** works to promote alternatives to policing and prisons and challenge the prison industrial complex in all its forms. We fulfill our mission by providing legal services and supporting organizing efforts of people in prison that promote health and justice; working with people in prison, their families, and community members on political education and mobilization campaigns; building coalitions to create safety and individual accountability without relying on the punishment system; and training the next generation of activists and lawyers committed to working for social justice.

Law Students for Reproductive Justice ("LSRJ"), a non-profit organization with over 100 chapters on law schools and thousands of alumni from across the country, trains and mobilizes law students and new lawyers to foster legal expertise and support for the realization of reproductive justice. LSRJ works to ensure that all people can exercise the rights and access the resources they need to thrive and to decide whether, when, and how to have and parent children with dignity, free from discrimination, coercion, or violence.

Legal Services for Prisoners with Children ("LSPC") organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights and to reunify families and communities. LSPC builds public awareness of structural racism in policing, the courts and prison system and we advance racial and gender justice in all our work. LSPC's strategies include legal support, trainings, advocacy, public education, grassroots mobilization and developing community partnerships. LSPC believes that the best way to keep families together and achieve reunification is to reduce the use of punishment and incarceration as a means of solving social problems.

**Legal Voice** is a non-profit public interest organization that works in the Pacific Northwest to advance the legal rights of women through public impact litigation, legislation, and legal rights education. Since its founding in 1978 (as the Northwest

Women's Law Center), Legal Voice has been dedicated to protecting and expanding women's legal rights. Toward that end, Legal Voice has advocated for legislation to advance protections for pregnant women, including laws advancing equal opportunity in the workplace and banning shackling of pregnant and laboring incarcerated women. In addition, Legal Voice has participated as counsel and as amicus curiae in the Pacific Northwest and across the country in numerous cases involving the rights of pregnant women. Legal Voice opposes, and has successfully challenged, prosecutions of pregnant women for their pregnancy outcomes and works to end punitive measures that undermine the humanity and legal rights of all pregnant women.

NAMA Recovery of Tennessee is the Tennessee statewide and Northwestern Georgia chapter of the National Alliance for Medication Assisted Recovery (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 destignatizing 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

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.

The 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.

**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.

National Women's Health Network ("NWHN") improves the health of women by influencing public policy and providing health information to support decisionmaking 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.

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.

Physicians for Reproductive Health ("PRH") is a doctor-led national organization that uses evidence-based medicine to promote sound reproductive health care policies. Physicians for Reproductive Health unites the medical community and concerned supporters to improve access to comprehensive reproductive health care, including contraception and abortion, especially to meet the health care needs of economically disadvantaged patients.

Planned Parenthood of Middle and East Tennessee ("PPMET") is a recognized and respected leader in providing reproductive, sexual and complementary healthcare and comprehensive sexuality education to women, men and teens, serving 76 of the 95 counties in Tennessee. PPMET believes that the self-determined pursuit of sexual health is important for everyone's well-being and quality of life.

Planned Parenthood Greater Memphis Region ("PPGMR") is one of Tennessee's oldest and largest private, non-profit health care agencies serving 42 counties in West Tennessee, North Mississippi and East Arkansas. PPGMR's mission is to ensure broad public access to reproductive and related health care through health center services, education, advocacy and community partnerships so that all women, men and teens in the Mid-South have the tools to plan their families and lives.

**Positive Women's Network** – **USA** ("PWN-USA") envisions a world where women living with HIV can live long, healthy, dignified and productive lives, free from stigma and discrimination. Our mission is to prepare and involve all women living with HIV, in all our diversity, including gender identity and sexual expression, in all levels of policy and decision-making. In working to ensure the rights and dignity of women with HIV, PWN-USA promotes the realization of reproductive justice, including our right to choose when and how to be sexual and when or whether to have children and the information to make an informed decision.

**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. Dr. Kelley Saia, an

Assistant Professor of Obstetrics and Gynecology at Boston University Medical School, is the director of the program. Project R.E.S.P.E.C.T has been helping and treating pregnant women for several decades; Dr. Saia has been the director since 2006. Project R.E.S.P.E.C.T 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. Opioid maintenance therapy during pregnancy is the American College of Obstetrics and Gynecology's recommended treatment for women with opioid addiction during pregnancy. Comprehensive care for women with substance abuse disorders, specifically opioid addiction, which includes methadone or buprenorphine, 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.

**SisterLove, Inc.** is the oldest nonprofit in Georgia dedicated specifically to the education, prevention and support needs of women, men and youth at risk for HIV/AIDS. SisterLove's mission is to eradicate the impact of HIV/AIDS and other reproductive health challenges upon women and their families through education, prevention, support and human rights advocacy in the United States and around the world.

SisterReach is a grassroots Reproductive Justice organization focused on empowering and mobilizing women and girls in the community around their reproductive and sexual health to make informed decisions about themselves, therefore to become advocates for themselves. The organization does its work using a three-pronged strategy of reproductive and sexual health education, policy and advocacy on the behalf of women and girls of color, poor and rural women and their families. SisterReach considers punitive measures taken against pregnant mothers a Human Rights violation not only for the mother struggling with drug dependence, but her family as well. SisterReach considers a violation of these rights an act of violence from both the medical community and the government and are committed to ensuring that low income families, in particular, are not further marginalized by punitive measures which have proven to be detrimental to the health and well-being of families.

**Sociologists for Women in Society** is a nonprofit professional feminist organization dedicated to: 1) Encouraging the development of sociological feminist theory and scholarship; 2) Transforming the academy through feminist

leadership, career development, and institutional diversity; 3) Promoting social justice through local, national, and international activism; 4) Supporting the publication and dissemination of cutting edge feminist social science.

**Surge Northwest** is a nonprofit organization based in Seattle, Washington, that works to advance racial and reproductive justice through community mobilization, education, and policy advocacy. The organization's priorities include working to ensure reproductive health and justice for imprisoned people, as well as ensuring that all people have access to health care. Surge Northwest is particularly concerned that criminalization and incarceration are far too often used to respond to what are, in fact, public health concerns, to the detriment of communities of color and poor people. Surge Northwest supports sound, evidence-based public policies that promote health and reproductive justice.

The **Women's Law Project** is a non-profit legal advocacy organization in Pennsylvania. Founded in 1974, the Law Project works to advance the legal and economic status of women and their families through litigation, public policy development, education, and one-on-one counseling. Throughout the past forty years, the Law Project has played a leading role in the struggle to eliminate discrimination against women based on pregnancy and reproductive capacity, and to ensure that women have unimpeded access to safe reproductive health care, including miscarriage management and medical and surgical abortion. Our work includes representing reproductive health care providers and patients, challenging barriers to women's health services, and advocating for public health policies that respect and support women's reproductive choices.

Worldwide Womens Criminal Justice Network supports women throughout the world who have been wrongfully convicted and overly charged. Pregnant women face tremendous challenges in the courts and are often defended miserably. Too many women end up serving long sentences for tangential crimes committed by men. WCJN has a strong interest in supporting the rights of women, particularly pregnant women who are indeed the most vulnerable.

## **Individuals**

**Ronald Abrahams, MD, FCFP,\*** 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. 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 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.

**Pippa Abston, MD, PhD, FAAP,** is a pediatrician and Assistant Professor of Pediatrics practicing in Alabama. She is on the board of Physicians for a National Health Program and is Physician Coordinator for North Alabama Healthcare for All. In her book *Who is My Neighbor: A Christian Response to Healthcare Reform*, she explains why providing good healthcare to everyone in our country would improve not only the quality of our medical system but our economic health. She is also on the board of the Huntsville Chapter of NAMI, The National Alliance on Mental Illness. In her family, practice and community work, she has witnessed first-hand the effects of addiction as a medical illness and has advocated for better access to effective treatment instead of criminalization of the sick.

Joanne Belknap, PhD, is a Professor in the Faculty of Sociology, University of Colorado, Boulder, CO. She is also the President of the American Society of Criminology (2013-14), the largest academic criminology organization in the world. Her research is primarily on gender-based abuse and the trajectory of trauma to offending among women and youth. In addition to a prolific journal article publication history, Dr. Belknap recently published the fourth edition of her book, *The Invisible Woman: Gender, Crime, and Justice*. She has secured almost two million dollars in research grant money and has won numerous research, teaching and service awards.

**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.

**Susan C. Boyd, PhD,** is a Professor in the Faculty of Human and Social Development, University of Victoria, BC, Canada. She is a drug policy researcher and author of numerous journal articles and books, including: *Hooked: Drug War Films from Britain, Canada, and the U.S.*; *From Witches to Crack Moms: Women, Drug Law, and Policy; Mothers and Illicit drugs*, and co-editor of *With Child: Substance Use During Pregnancy: A Woman-Centered Approach*.

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

Wendy Chavkin, MD, MPH,\* is a Professor of Population and Family Health and Obstetrics-Gynecology at the Mailman School of Public Health and the College of Physicians and Surgeons at Columbia University. She has written extensively about women's reproductive health issues for over two decades and done extensive research related to pregnant women, punishment and barriers to care.

Howard Cohen, MD,\* is currently the Medical Director of the Neonatal Intensive Care Unit (NICU) at Salem Hospital in Oregon. He completed his neonatology training at the University of Chicago in 1978 and served as the Medical Director of the NICUs at Carle Foundation Hospital and the Children's Hospital of Illinois as well as Medical Director of the latter before coming to Oregon. In addition he was on the faculty at the University Of Illinois College Of Medicine and is currently a faculty member at Oregon Health Science University. Throughout his 35 year career he has helped care for many drug-dependent women and their infants. He understands the critical importance that these women have the same access and right to optimal treatment conditions as apply to management of pregnant women with any other chronic medical conditions in order to assure the best outcome for their babies.

Alison Cole, Professor, BA (Hons), LLM, is the Open Society Justice Initiative legal officer for international justice, based in New York. Cole has worked with a range of international courts, first in prosecutions at the International Criminal Tribunal for Rwanda, and most recently as legal officer with the Co-Investigating Judges at the ECCC/Khmer Rouge tribunal in Phnom Penh. She has also worked with investigations at the International Criminal Court (ICC), and at the joint

Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) and the Former Yugoslavia (ICTY). Cole has also worked on human rights projects in Uganda, Zambia, India, and Israel, and worked on death row projects in Jamaica. She holds a first class BA honors degree in law from Cambridge University and participated in the European Erasmus exchange at Utrecht University. She obtained her Master of Law degree (LLM) from Harvard Law School and is a registered New York attorney.

**Elizabeth Cooper, JD,\*** is an Associate Professor of Law at Fordham University School of Law. From 1991-1994 Professor Cooper was the Co-chair of the New York Task Force on Women and AIDS, and is the author of *Why Mandatory HIV Testing of Pregnant Women and Newborns Must be Fair: A Legal, Historical, and Public Policy Analysis* (Cardozo Women's Law Journal 1996).

Mona J.E. Danner, PhD,\* is a Professor of Sociology and Criminal Justice at Old Dominion University in Norfolk, Virginia. Her research expertise is in the areas of social inequalities (gender, race/ethnicity, class) and crime control policies, with particular emphasis on the effects of crime policies on women. Dr. Danner is the author of more than 30 academic journal articles and book chapters; she has presented research at conferences throughout the U.S., in Europe, Latin America, Australia and at the NGO Forum held in conjunction with the United Nations Conference on Women in 1995 in Beijing, China. In addition to reviewing manuscripts for numerous scholarly journals, she has served as associate editor or on the editorial board of three journals, as a grant reviewer for the National Institute of Justice and the National Science Foundation, and as a member of many professional association committees, including the American Society of Criminology. Dr. Danner has published op-eds and been featured in television and radio interviews and been quoted by the popular print media more than a dozen times.

Nancy L. Day, PhD, MPH, is Professor of Psychiatry and Epidemiology. She has studied the effects of prenatal exposures to alcohol, marijuana, cocaine, and tobacco for over 20 years. She has multiple publications and has received grants from the National Institute of Health in support of this work. She is currently the Director of the Maternal Health Practices and Child Development Project, a consortium of projects centered on the identification of the long-term effects of prenatal substance abuse.

**Ernest Drucker, PhD,** is Professor Emeritus in the Department of Family and Social Medicine, Montefiore Medical Center/Albert Einstein College of Medicine;

and Senior Research Associate, Scholar in Residence, and Adjunct Professor of Epidemiology at John Jay College of Criminal Justice of The City University of NY. He is licensed as a Clinical Psychologist in NY State and conducts research in AIDS, drug policy, and prisons and is active in public health and human rights efforts in the US and abroad. For 25 years Dr. Drucker was Director of Public Health and Policy Research at Montefiore/Einstein, founding Director of Montefiore's 1000 patient drug treatment program until 1990; an NIH funded principal investigator since 1991 and author of over 100 peer reviewed scientific articles, texts, and book chapters, including *A Plague of Prisons: The Epidemiology of Mass Incarceration in America* (The New Press 2011).

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/traumaspecific care for both 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. She received her MSW from the University of Michigan and her Ph.D. from the Florence Heller School, Brandeis University. 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, including Getting Sober, Getting Well: A Treatment Guide for Caregivers Who Work with Women and The Nurturing Program for Families in Substance Abuse Treatment and Recovery. 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, and is a long-time board member of the Association for Behavioral Healthcare, the statewide behavioral health provider association. Dr. Finkelstein has been the recipient of numerous awards and honors in the fields of addiction, drug abuse, alcoholism, and social work.

Loretta Finnegan, MD,\* is the president of Finnegan Consulting, which addresses education, research and treatment issues regarding women's health and perinatal addiction. For sixteen years she was with the National Institutes of Health in several capacities: Senior Advisor on Women's Issues, National Institute on Drug Abuse; Director, Women's Health Initiative, Office of the Director; and Medical Advisor to the Director, Office of Research on Women's Health, Office of the Director. Dr. Finnegan was a Professor of Pediatrics in the Psychiatry and Human

Behavior Department at Jefferson Medical College of Thomas Jefferson University for fourteen years. She was founder and Director of a groundbreaking program called "Family Center," a comprehensive multidisciplinary program for addicted pregnant women and their children at Jefferson Medical College and Hospital in Philadelphia. She is credited with the development of an assessment tool for neonatal abstinence syndrome, which is used widely in the USA and abroad. As a recognized nationally and internationally expert in the field, she has published widely and has given nearly 1,000 presentations throughout the world on clinical research and knowledge of women's health and perinatal addiction.

**Jeanne Flavin, PhD,\*** is a Professor of Sociology at Fordham University, Bronx, NY whose research examines the impact of the criminal justice system on women. She is author of several scholarly articles and the award-winning *Our Bodies, Our Crimes: Policing Women's Reproduction in America* (NYU 2009), and co-editor of *Race, Gender, and Punishment: From Colonialism to the War on Terror* (Rutgers 2007). Dr. Flavin also currently serves on the Board of Directors of National Advocates for Pregnant Women.

Susila Gurusami, MA, CPhil, is a doctoral candidate in the Department of Sociology at UCLA. Her research focuses on how formerly incarcerated women of color in Los Angeles experience life after prison, and her preliminary dissertation findings support that the criminalization of drug use produces extensive, generational damage for communities and individuals, both at the interpersonal and fiscal levels. Her research data confirms that holistic, affordable, accessible, and humane rehabilitation treatment for drug users is critical in creating viable long-term solutions to drug abuse.

**Diane Price Herndl, PhD,\*** is Professor and Chair of Women's and Gender Studies at the University of South Florida at Tampa Bay. She does research on women, health, and cultural representations; she is the author of *Invalid Women: Figuring Feminine Illness in American Fiction and Culture, 1840-1940*, and the co-editor of *Feminisms, Feminisms Redux, and Women's Worlds*. Her primary research focuses on representations of breast cancer, but her teaching includes "Body Politics" and "The Politics of Women's Health," both of which focus on issues of policing the pregnant body.

**Kristi Holsinger, PhD,\*** is Professor of the Criminal Justice and Criminology department at the University of Missouri-Kansas City, where she has been on faculty since 1999. Her primary research interests include policies and practices related to girls and women in correctional systems as well as innovations in

teaching. Each fall, she teaches a mentoring course in collaboration with the Jackson County Family Court, in which students mentor and develop programming for incarcerated girls. Dr. Holsinger's book, *Teaching Justice: Solving Social Justice Problems through University Education* was published in 2012. She has over 30 academic articles, and has delivered more than 50 conference presentations.

**Drew Humphries, D. Criminology,\*** is a Professor of Criminal Justice in the Faculty of Arts and Sciences, Rutgers University-Camden. She chairs the department of sociology, anthropology, and criminal justice. She chaired the taskforce on maternal drug use for the Division of Women and Crime, American Society of Criminology and authored *Crack Mothers: Pregnancy, Drugs, and the Media* as well as numerous journal articles on maternal drug use. She also contributed to and edited *Women, Violence and the Media: Readings in Feminist Criminology*.

Hytham M. Imseis, MD, is a Maternal-Fetal Medicine Specialist practicing in Charlotte, North Carolina. His career has been dedicated to caring for and advocating for pregnant women. He is very involved in the medical education of Obstetrician/Gynecologists across the United States for which he has won many teaching awards. He currently serves on the Women's Executive Board and the Ethics Committee at his hospital and has served as the Medical Director of the Mountain Area Perinatal Substance Abuse Program and the Mountain Area Health Education Teen Pregnancy Clinic. Dr. Imseis has published research articles in the *American Journal of Obstetrics and Gynecology* and in *Obstetrics and Gynecology* and currently reviews manuscripts for publication in both the *American Journal of Obstetrics and Gynecology* and *Ultrasound in Obstetrics and Gynecology*. Dr. Imseis also currently serves on the Board of Directors of National Advocates for Pregnant Women.

Hendree Jones, PhD, is a Professor in the Department of Obstetrics and Gynecology, School of Medicine, University of North Carolina, Chapel Hill and Executive Director of Horizons, a comprehensive drug treatment program for pregnant and parenting women and their drug-exposed children. She is also an Adjunct Professor in the Department of Psychiatry and Behavioral Sciences and in the Department of Obstetrics and Gynecology, School of Medicine, Johns Hopkins University. Dr. Jones is an internationally recognized expert in the development and examination of both behavioral and pharmacologic treatments for pregnant women and their children in risky life situations. Dr. Jones has received continuous funding from the United States National Institutes of Health since 1994 and has

published over 145 peer-reviewed publications, two books on treating substance use disorders (one for pregnant and parenting women and the other for a more general population of patients), several book and textbook chapters, and multiple editorial letters and non-peer reviewed articles for clinicians. She is a consultant for the United Nations and the World Health Organization. Dr. Jones leads or is involved in projects in Afghanistan, the Southern Cone, the Republic of Georgia, South Africa, and the United States, which are focused on improving the lives of children, women and families.

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.

Rebecca M. Jordan-Young, PhD,\* is Tow Associate Professor and Chair of the Department of Women's, Gender, and Sexuality Studies at Barnard College, Columbia University. She is a sociomedical scientist who conducted research on urban health, substance use, and HIV/AIDS for more than 15 years before joining the faculty of Barnard College. Her research of direct relevance to this brief has included analyzing the impact of welfare reform on vocational rehabilitation programs for substance users and assessing behavioral interventions for urban mothers with problem drinking. Additionally, Dr. Jordan-Young regularly teaches a course at Barnard College, Columbia University on women and health.

**Karol Kaltenbach, PhD,\*** is a Professor of Pediatrics and Professor of Psychiatry and Human Behavior at 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; 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.

Stephen R. Kandall, MD, FAAP, served as Chief of Neonatology at Beth Israel Medical Center from 1976 to 1998 and retired in 1998 as Professor of Pediatrics at the Albert Einstein College of Medicine. Most of Dr. Kandall's 90 contributions to the medical literature deal with perinatal drug use, and he has contributed chapters to many standard textbooks, including Substance Abuse: A Comprehensive Textbook and Principles of Addiction Medicine, as well as his own definitive book on the history of women and addiction in the United States, Substance and Shadow. Dr. Kandall has lectured throughout the United States, as well as Belgium, Italy, Austria and Australia. He has served as president of his local medical societies, as an advisor to many commissions and panels on drug abuse (including the March of Dimes, Narcotic and Drug Research, Inc., and the Scott Newman Foundation in Los Angeles), and currently advises legislative subcommittees on perinatal health in North Carolina.

Nancy M. P. King, JD,\* is a Professor in the Department of Social Sciences and Health Policy, Wake Forest School of Medicine, and Co-Director of the Center for Bioethics, Health, and Society, Wake Forest University. Her scholarship addresses a range of bioethics issues, including autonomy and informed consent in health care, medical decisions at the beginning and end of life, benefit and uncertainty in medicine, bias and stigma in health care, health disparities, and the social and policy contexts that shape access to health services. She has published over 100 scholarly articles and book chapters, and is co-editor of *The Social Medicine Reader* (Duke University Press 2005) and *Bioethics, Public Moral Argument, and Social Responsibility* (Routledge 2012). She has taught medical, law, and graduate students and faculty for many years, has served on hospital ethics committees, and is a fellow of the Hastings Center.

Sheryl Pimlott Kubiak, PhD, MSW,\* is a Professor in the College of Social Science at Michigan State University. She has graduate degrees in social work and psychology and studies the intersections between criminal justice, mental health, and substance abuse with a particular expertise in trauma and post-traumatic stress disorder. Dr. Kubiak has both practice and research experience in the area of pregnancy during incarceration and has written several manuscripts in the area such as: *Improving Pregnancy Outcome During Imprisonment: A Model Residential Care Program* and *Assessing Long-term Outcomes of an Intervention Designed for Pregnant Incarcerated Women*.

**Dianne R. Layden, PhD,** is a retired professor of business and public administration. Her field is American Studies. She has published numerous papers about public violence, including the 2009 murder of late-term abortion provider

Dr. George Tiller by an anti-abortion activist. She is an active member of historical societies and oral history associations, and is editor of Legacy, the research-based newsletter of the New Mexico Jewish Historical Society.

Paul Leighton, PhD,\* is a Professor in the Department of Sociology, Anthropology and Criminology at Eastern Michigan University. He is the coauthor of *Class, Race, Gender & Crime* (4th ed.), which examines how the criminal justice system reflects social inequalities and recreates them. Among his other publications, Dr. Leighton co-edited Criminal Justice Ethics, which examines the connections between social justice, public policy and criminal justice. Although the graduate class he teaches is formally called Domestic and Violence & Sexual Assault, Dr. Leighton's practice for 17 years has been to weave in other examples of violence against women, including institutional and state sanctioned harms. Dr. Leighton served for six years on the board of SafeHouse, the domestic violence shelter and advocacy agency for Washtenaw County, Michigan. He served two years as Vice president and two years as President. For about 10 years Dr. Leighton has facilitated the Oppression, Barriers and Privilege session for volunteers going through the 40 hour crisis intervention training at SafeHouse.

Kasia Malinowska, Dr. PH, directs the Open Society Institute's Global Drug Policy program, which provides grants to initiatives advocating an evidence-based approach to drug policy worldwide and encourages greater scrutiny of current international drug policy. She has authored or co-authored dozens of policy and scientific papers for scientific journals and book chapters 'Global HIV/AIDS Medicine' and 'Public Health and Human Rights, Evidence-Based Approaches' as well as articles for the international press on harm reduction, women's health, HIV, medical ethics and drug use.

**David C. Marsh MD, CCSAM, ASAM, ABAM, ISAM,\*** is a Professor, Clinical Sciences and Senior Associate Dean at the Northern Ontario School of Medicine. Dr. Marsh has worked in clinical care and research in the area of addiction treatment, and specifically treatment of opioid dependence. He has published over 50 papers, book chapters and government reports and been invited to speak nationally and internationally for the past 20 years. In 2004 he was awarded the Nyswander-Dole Award for his contributions to the field.

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 Kennedy 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.

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, an international research and services organization based in New York, 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 in family law and health law and publishes and lectures internationally.

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.

Candace McCoy, JD, PhD,\* is Professor of Criminal Justice at the Graduate Center and John Jay College, City University of New York. She has researched and published extensively in the field of sentencing policies and plea bargaining practices. She was a Senior Research Associate with the United States Sentencing Commission at the time that the federal sentencing guidelines were formulated and

went into effect. Her most recent book publication is the chapter on prosecutorial practices in the *Oxford Handbook of Criminal Justice* (2011).

Michelle Hughes Miller, PhD,\* is an Associate Professor in the Department of Women's and Gender Studies, University of South Florida, Tampa, Florida. She is a feminist criminologist whose research centers around motherhood within legal and policy constraints and systemic responses to violence against women. Recent publications have appeared in the *Journal of Interpersonal Violence* and the *Journal of Community Psychology*. She is also co-editor of *Alliances for Advancing Academic Women: Guidelines for Collaboration in Chemistry, Engineering, And Beyond*, from Sense Publishers (2014).

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 New York 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, and he sits on the editorial board or is an editorial consultant to almost all of the most prominent medical journal, including JAMA, New England Journal of Medicine, Lancet, and 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.

Deborah Narrigan, MSN, CNM, has worked for over 25 years as a nurse-midwife in a variety of reproductive health care settings and programs serving at risk women in Nashville, TN. In addition, she has been a member of the board of directors of the National Women's Health Network as well as a board member of the Middle and East TN affiliate of Planned Parenthood. She has also served as a member of the US Food and Drug Administration Advisory Committee on Fertility and Maternal Health Drugs and consulted for several educational projects including a short-term AID-funded program for curriculum design for midwifery education in Indonesia. She has authored three book chapters and several peer-reviewed journal articles covering topics in women's health and public policy.

Susan F. Neshin, MD,\* has been working in addiction treatment and specifically opioid dependence treatment since 1983. She is certified in Addiction Medicine by the American Board of Addiction Medicine and has been Medical Director of JSAS Healthcare, Inc., an outpatient medication-assisted treatment program, since 1986. Her areas of clinical expertise are opioid dependence treatment, the treatment of co-occurring psychiatric and addictive disorders and the treatment of the pregnant opioid addict. She has been on the faculty of the American Association for the Treatment of Opioid Dependence's (AATOD) Clinician's Course since its inception and in 1997 received AATOD's Nyswander-Dole Award for outstanding contributions in the field of methadone treatment. Dr. Neshin lectures on topics in addiction medicine both locally and nationally and is a former member of the Professional Advisory Committee to the New Jersey Division of Mental Health and Addiction Services. In November, 2014 she was appointed to the New Jersey Governor's Council on Alcoholism and Drug Abuse.

**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.

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. Dr. Newman also currently serves on the Board of Directors of National Advocates for Pregnant Women.

**Kylie Parrotta, MS,\*** is an Instructor in Sociology & Criminal Justice and Women's & Gender Studies at Delaware State University, Dover, DE, USA. She studies race and gender disparities in criminal sentencing outcomes and has co-

authored journal articles, including: "The Intersection of Race and Gender: An Examination of Sentencing Outcomes in North Carolina," "The Use of Gendered Narratives in the Courtroom: Constructing an Identity Worthy of Leniency," and "Marginalized Identities and Sociological Imaginations Behind Bars."

Michael L. Perlin, AB, JD, LLD (hon.),\* is the Director of the International Mental Disability Law Reform Project and the Online Mental Disability Law Program of the New York Law School. He is an internationally recognized expert on mental disability law, and has authored 23 books and nearly 300 scholarly articles on the subject. He has spoken and taught around the world on issues related to the human rights of people with mental disabilities. Under the aegis of Mental Disability Rights International (MDRI), a Washington, DC-based human rights advocacy NGO, Professor Perlin has done site visits and conducted mental disability law training workshops in Hungary, Estonia, Latvia, Uruguay, and Bulgaria. He has taught international human rights, criminal procedure and mental disability law in Finland, Israel, Taiwan, Nicaragua, Japan, and Indonesia.

Camilla Pickles, LLB, LLM,\* is a doctoral scholar at the in the Department of Private Law, Faculty of Law, University of Pretoria, Pretoria, South Africa. Her research focuses on securing and promoting pregnant women's constitutional rights and autonomy in law. Camilla Pickles is the author of a number of peer-reviewed journal articles and her research has also been presented at national and international conferences.

**Robert Roose, MD, MPH,\*** is the Chief Medical Officer of Addiction Services of the Sisters of Providence Health System in Holyoke, MA. He is dually Board certified in Family Medicine and Addiction Medicine and an expert in the treatment of opioid dependence, particularly using methadone and buprenorphine. He has provided and supervised care for thousands of patients, conducted research, and done extensive clinical teaching on medication-assisted treatment and the integration of medical and addiction care.

Lynn T. Singer, PhD,\* is a clinical and developmental psychologist and Professor of Epidemiology & Biostatistics, Pediatrics, Psychiatry and Psychology at Case Western Reserve University (CWRU) in Cleveland, Ohio. She has directed several major research programs, including a study of high risk preterm infants with lung disease; a longitudinal study of cocaine-exposed infants in Cleveland from birth to 12 years, and a birth cohort study of fetal MDMA exposure in London, England. She also directed the Cleveland site of a multi-site industry study to evaluate effects of long chain polyunsaturated acids (LCPUFAS) on infant

development. She currently serves as Chair of the Steering Committee for the International Center for Autism Research and Education at CWRU. In addition to the scientific studies, she was Principal Investigator of an NSF ADVANCE Institutional Transformation Award that led to increases in the number of women and URM faculty at CWRU in the STEM fields overall and in senior leadership positions.

**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 treatment. Dr. Stancliff also consults on drug related problems for the AIDS Institute, New York State Department of Health and for several international organizations.

**Denise Tomasini-Joshi, JD, MIA,\*** is an attorney specializing in harm reduction and over-criminalization, she has over 11 years working on criminal justice reform - including advising national, state and local governments on policy - and has authored articles on the impact of the overuse of pretrial detention and alternatives to criminal prosecution.

Nina B.L. Urban, MD, MSc,\* is an Assistant Professor in the Department of Psychiatry at Columbia University. She is a Research Psychiatrist in the Division of Substance Abuse at the New York State Psychiatric Institute and an attending psychiatrist at New York Presbyterian Hospital. Her research focuses on neurochemical changes contributing to drug addictions and experimental treatments thereof, with focus on cocaine, alcohol and cannabis abuse. As a diplomate of the American Board of Addiction Medicine, she is providing clinical treatment for patients with substance use disorders and psychiatric comorbidities in underserved populations of upper Manhattan. She is also the author or co-author of multiple peer-reviewed scientific articles in the area of neuroimaging and brain stimulation and is a co-author of the textbook *Behavioral Neurobiology of Schizophrenia and its Treatment*. Dr. Urban is an executive member of the New York County District Branch of the American Psychiatric Association and chair of its research committee and is on the Board of directors of the Global Bioethics Initiative.

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Tricia E. Wright, MD, MS, 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.

<sup>\*</sup> Institutional affiliation is for identification purposes only.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing amicus brief complies with this Court's

length limitation because it contains 4,906 words, excluding exempted parts of the

brief. This amicus brief also complies with this Court's typeface and typestyle

requirements because it has been prepared in a proportionally spaced typeface

using 14 point Times New Roman font.

Dated: December 8, 2014

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**CERTIFICATE OF SERVICE** 

I hereby certify that I electronically filed the foregoing amicus brief with the

Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by

using the appellate CM/ECF system. I certify that the registered attorney in the

case is a registered CM/ECF user and that service will be accomplished by the

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