

**IN THE COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA**

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| <b>STATE OF OKLAHOMA,</b>     | ) |  |
|                               | ) |  |
| <b>Appellant.</b>             | ) | <b>Appeal Case No. S-2019-308</b>      |
|                               | ) |  |
| v.                            | ) | <b>District Ct. Case No. CF-17-274</b> |
|                               | ) | <b>(Garfield County)</b>               |
| <b>KATHRYN JUANITA GREEN,</b> | ) |  |
|                               | ) |  |
| <b>Appellee.</b>              | ) |  |

**MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE***

Pursuant to Rule 3.4(F)(4), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18 (2019), the American College of Obstetricians and Gynecologists (ACOG); Association of Women's Health, Obstetrics and Neonatal Nurses (AWHONN); American Medical Women's Association (AMWA); American Academy of Addiction Psychiatry (AAAP); Association of Women's Health, Obstetrical & Neonatal Nurses - Oklahoma Section (AWHONN); National Alliance of Medication Assisted Recovery; Oklahoma Society of Addiction Medicine (OKSAM) and American Society of Addiction Medicine (ASAM); Oklahoma Nurses Association (ONA); Drug Policy Alliance; Still She Rises; National Coalition for Child Protection Reform; Institute for Health and Recovery; Harm Reduction International; Legal Action Center; ACLU of Oklahoma; Oklahoma Coalition for Reproductive Justice; Our Bodies Ourselves; Oklahoma Women's Coalition; Oklahoma Criminal Defense Lawyers Association; Center for Reproductive Rights; National Council for Incarcerated & Formerly Incarcerated Women and Girls; Hon. Nancy Gertner; Dr. Susan F. Sharp, PhD; and Dr. Leslie Hartley Gise, by and through their

undersigned counsel Still She Rises and Drug Policy Alliance, respectfully request leave to file a brief of *amici curiae* supporting affirmance of the District Court.

Proposed *amici* are national and state medical and public health organizations, and individual experts with recognized expertise and longstanding concern in the areas of maternal, fetal, and neonatal health, and in the effects of alcohol and controlled substances on families and society, as well as organizations and individuals committed to supporting the rights and protection of mothers, women generally, and families.<sup>1</sup> Together, proposed *amici* represent thousands of healthcare providers in Oklahoma and tens of thousands across the country. Proposed *amici* recognize a strong societal interest in protecting the health of women, children, and families. Those interests are undermined, not advanced, by laws that permit the detention and arrest of a pregnant woman and state control over her private medical decisions during the course of her pregnancy. The unequivocal consensus among proposed *amici* and virtually every other major medical or public health organization in the United States is that use of controlled substances by a woman during the course of her pregnancy is a medical and public health issue, not an issue that should be subject to state intervention and control. Proposed *Amicus Curiae* brief cites the published statements of many of these organizations.<sup>2</sup>

Oklahoma's Abuse, Neglect, and Exploitation statute, Okla. Stat. Title. 21, § 843.5(C), which incorporates the definition of "neglect" articulated in the Child and Juvenile Code, Title

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<sup>1</sup> The interests of proposed *amici curiae* are further set out in the attached Appendix.

<sup>2</sup> See for example the American College of Obstetricians and Gynecologists, Comm. on Health Care for Underserved Women, *Committee Opinion 473: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, 117 *Obstet. Gynecol.* 200, 2 (2011) (reaffirmed 2014) ("The use of the legal system to address perinatal alcohol and substance abuse is inappropriate. . . . In states that mandate reporting, policy makers, legislators, and physicians should work together to retract punitive legislation and identify and implement evidence-based strategies outside the legal system to address the needs of women with addictions.

10A § 1-1-105, describes only acts that would affect a born child in language that cannot be read to apply to the acts of a pregnant person with respect to the pregnancy. Appellant would have this Court vastly expand the statute in a manner that would expose a wide range of pregnant individuals to criminal prosecution, including those who have allegedly used prescription opioid treatment medications without a valid prescription, women under 21 years of age who have consumed any amount of alcohol during pregnancy, and arguably even those who have allegedly failed to obtain for themselves “adequate” food, shelter, or medical care, including people experiencing homelessness or eating disorders who nonetheless choose to carry their pregnancies to term. Title 10A § 1-1-105(48). Proposed *amici* oppose this expansion because scientific and medical evidence cited and discussed in the proposed *amicus* brief, confirms that it would harm pregnant women, their pregnancies, their future children, and their families. It would also affect the relationship between medical providers, including obstetricians and mental health professionals, and their patients. Any decision by this Court will thus directly impact the medical practices of the health care providers represented by several of proposed *amici*, and they therefore seek to provide this Court with insight into the adverse effects on medical care that would be caused by the disposition sought by Appellant.

The research and opinions of proposed *amici* offer insight into the Legislature’s reasons for not enacting legislation to expand the neglect statute in the manner sought by Appellant. Recently, the Oklahoma Legislature acted in accordance with this scientific and medical consensus, treating drug use and pregnancy as medical and public health matters and avoiding a measure that would have criminalized pregnant women’s conduct with respect to their pregnancies. Given that the *neglect statute* does not on its face apply to actions *by the pregnant individual* that may impact a developing fetus, the Legislature recently debated and did *not* enact

amendments to other sections of the criminal code that would have established criminal penalties for substance use during pregnancy.

Legislation proposed in 2015, Okla. S.B. 559, would have expanded the assault statute to permit prosecution for the “illegal use” of a narcotic drug during pregnancy. That legislation was never enacted. The failure of the Legislature to reach resolution on S.B. 559 followed the long-standing, public, and unequivocal opposition by many of proposed *amici* to passage of any laws that would criminalize women’s use of drugs while pregnant. Similarly, the Legislature has not included any language expanding the application of the neglect statutes to regulate the conduct of pregnant women with respect to their pregnancies or expanding its definition of “child.”

The legal issues presented by this appeal cannot properly be decided in isolation from the scientific, medical, and public health contexts in which they are rooted. Proposed *amici* further seek to assist this Court by making known the explicit and historical opposition to legislation and statutory interpretations such as the one put forward by Appellant in the instant case by scientific, medical, and public health experts. Each proposed *amicus* has condemned the approach promoted by SB 559, and the medical and scientific groups among proposed *amici* have advised their constituents to treat use of controlled substances during pregnancy as a medical and mental health concern best addressed through non-criminal, non-coercive medical and public health approaches that protect and respect patient privacy and decision making.

Proposed *amici* have medical and scientific expertise that can assist the Court in areas that the parties cannot. In its argument, Appellant suggests that the criminal code should treat a pregnant person’s use of a substance in the same manner it does the assaultive conduct against a pregnant person resulting in harm to a fetus, arguing that “it would be an absurdity” to do otherwise. Appellant Br. at 13. However, all of proposed *amici*, along with other leading medical

and public health organizations concerned with the treatment of pregnant women or substance use disorder, have strongly repudiated such application of criminal codes because, as shown by the research detailed in the proposed *amicus* brief, such an approach relies on medically and scientifically unfounded assumptions. Such organizations have repeatedly asserted that the criminalization of actions taken by a pregnant woman that may affect her fetus substantially impair, rather than advance, safe outcomes for newborn children. The accompanying brief will assist the Court in its disposition of this case by providing the same scientific, medical, and public health background that the experts including proposed *amici* have used to counsel the Legislature – including evidence-based, peer-reviewed research that weighs overwhelmingly against extending the neglect statute to encompass acts by pregnant persons thought or presumed – often incorrectly – to pose risks.

Appellant’s novel theory of prosecution expanding Oklahoma’s neglect statute to potentially criminalize the actions of pregnant women would open the door to large numbers of new criminal prosecutions in Oklahoma. The Oklahoma medical providers among these proposed *amici*, and members of the defense bar and civil liberties communities providing indigent defense, stand to be directly affected by the Court’s determination of the legal issue in this case. For members of the medical community, allowing prosecutions of pregnant women would affect their ability to provide the highest level of prenatal and other healthcare to their patients who have used or may be considered to have misused any type of unlawful or prescription drugs or alcohol, and who as detailed in the proposed brief would be less likely to seek and maintain prenatal care, and, when they do seek care, would be less likely to openly share essential information with their providers.

The United States Supreme Court has explained that

A traditional function of an amicus is to assert "an interest of its own separate and distinct from that of the [parties]," whether that interest be private or public. It is "customary for those whose rights [depend] on the outcome of cases . . . to file briefs amicus curiae, in order to protect their own interests." Wiener, Briefing and Arguing Federal Appeals, 269 (1961). This Court has recognized the power of federal courts to appoint "amici to represent the public interest in the administration of justice."

*United States v. Barnett*, 376 U.S. 681, 738, 84 S. Ct. 984, 1011-12, 12 L.Ed. 2d 23 (1964)

quoting *Universal Oil Products Co. v. Root Rfg. Co.*, 328 U. S. 575, 581, 66 S. Ct. 1176, 1179, 90 L. Ed. 1447 (1946).

The issue in the instant case is one of first impression in Oklahoma and, since its disposition could lead to criminal charges for a broad class of individuals and alleged conduct, warrants the input of interested parties as *amicus curiae*. This case is of similar, if not wider potential consequence than the appeal in *State ex rel. Moss v. Couch*, 1992 OK CR 66, 841 P. 2d 1154, in which the District Attorney for Tulsa County appealed the dismissal of an Information charging the misdemeanor offense of non-payment of wages. The Court in that case permitted *amicus curiae* briefs to be filed by the Oklahoma Attorney General, the Oklahoma Department of Labor, and the Oklahoma Criminal Defense Lawyers Association to comment on the question in the case. *Moss*, 1992 OK CR 66, 841 P. 2d 1154, 1155. Interpreting the statute at issue in the instant case as suggested by Appellant would not only expose a new swath of individuals to criminal charges, but would profoundly affect their access to healthcare and the wellbeing of fetuses, children, and families throughout the state.

It is logical and necessary for the Court to hear from the medical service providers, not only because such providers will be impacted by the Court's disposition of this case, but also because they are best positioned to explain the facts they have presented repeatedly in recent years to the Legislature, which has decided not to take the step sought by Appellant in this case.

The proposed *amicus* brief provides greater context for both parties' briefs, explaining the complex considerations at issue in the interpretation of the statute.

Filing of the proposed *amicus curiae* brief will neither delay disposition of this appeal nor prejudice either party. Both Appellant and Appellee have submitted initial briefs in this matter, and Appellant has not yet filed a reply brief within the time period permitted by Rule 3.4(F)(1), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18 (2019).

WHEREFORE, undersigned counsel requests that this Court grant leave to allow them to file the proposed brief on behalf of proposed *amici curiae* and issue an order permitting the aforementioned groups and individuals to serve as *amici* in the instant case. If such leave is granted, *amici* request that the brief tendered to the Clerk on the same date as the instant motion but held in abeyance be accepted and filed. Rule 1.13(K), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18 (2019).

DATED: November 27, 2019

Respectfully Submitted,



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**APPENDIX**  
**INTERESTS OF PROPOSED AMICI CURIAE**

*Amicus Curiae* **American College of Obstetricians and Gynecologists (ACOG)** is a non-profit educational and professional membership organization dedicated to the improvement of women's health. Founded in 1951, ACOG represents more than 90% of board certified ob-gyns in the United States, with more than 58,000 members, including 461 members in Oklahoma. ACOG's objectives are to foster improvements in all aspects of women's health care, to establish and maintain the highest possible standards for education, to publish evidence-based practice guidelines, to promote high ethical standards, and to encourage contributions to medical and scientific literature.

*Amicus Curiae* **Oklahoma Society of Addiction Medicine (OKSAM)** and the **American Society of Addiction Medicine (ASAM)** represent, respectively, more than 70 and 6,800 physicians, clinicians, and associated professionals who prevent, treat, and promote remission and recovery from the disease of addiction. OKSAM and ASAM members are dedicated to increasing access and improving the quality of addiction treatment, educating physicians and the public, and supporting research and prevention of addiction. OKSAM and ASAM are committed to reducing potential drug-related harms at every reasonable opportunity and share concern for the health and welfare of children and pregnant women.

*Amicus Curiae* **American Civil Liberties Union of Oklahoma (ACLU-OK)** is a non-profit, non-partisan membership organization devoted to protecting civil rights and civil liberties. For nearly fifty years, ACLU-OK, and its national affiliate, the American Civil Liberties Union, have litigated questions involving civil liberties in the state and federal courts, helping to establish literally dozens of precedents which today form part of the basic framework of our constitutional jurisprudence. With some 5,000 members in Oklahoma, and nearly 1.6 million members across the nation, the ACLU is among the oldest, largest and most active civil rights organizations in America. The ACLU-OK and its members have core, abiding commitments to protecting the relationship between a pregnant person and their fetus; limiting the state's attempts to control or limit that relationship; and fighting endeavors to criminalize a pregnant person in an attempt to advance an agenda that limits bodily autonomy in favor of bestowing rights to a fetus.

*Amicus Curiae* **American Academy of Addiction Psychiatry (AAAP)** is an international professional membership organization made up of practicing psychiatrists, university faculty, medical students and other related professionals founded in 1985 with approximately 1,000 members in the United States and around the world. AAAP is devoted to promoting accessibility to the highest quality treatment for all who need it by providing continuing education for addiction professionals, disseminating new information in the field of addiction psychiatry, and encouraging research on the etiology, prevention, identification, and treatment of the addictions. AAAP opposes prosecutions of women for use of criminalized substances during pregnancy based on the belief that instead of promoting prenatal care and treatment, the threat that women's use of illegal substances can be disclosed to law enforcement for use in criminal prosecutions

will likely discourage some pregnant women from seeking prenatal care and treatment of their substance use disorder and negatively impact the confidential psychiatrist-patient relationship.

*Amicus Curiae* **American Medical Women's Association (AMWA)**: It is critical AMWA be included in this Amicus Brief. AMWA has supported rights that protect women and their health. If Oklahoma expands its definition to include charging women with neglect (or worse) for things that happen during their pregnancies, that legal definition opens the window for fetal personhood (as equal to the rights of the woman). This is much more than a case about an individual because of the State's argument about fetal personhood.

*Amicus Curiae* the **American Medical Women's Association (AMWA)** is an organization of women physicians, medical students and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA is committed to supporting rights that protect women and their health, and ensuring that women physicians achieve equity in the medical profession and realize their full potential. It is the position of AMWA that that health care professionals must be able to talk to their patients about alcohol and drug use in order to make the most informed health decisions. Laws such as the proposed interpretation of Oklahoma's neglect statute interfere with the relationship between health care professionals and their patients who are pregnant, and lead to unhealthy outcomes.

*Amicus Curiae* **American Medical Women's Association (AMWA)** is a national, non-profit organization of over 10,000 women physicians and physicians-in-training representing every medical specialty. Founded in 1915, AMWA is dedicated to promoting women in medicine and advocating for improved women's health policy. AMWA strongly supports treatment and rehabilitation of women who use alcohol or drugs during pregnancy, and opposes the arrest, jailing and/or prosecution of pregnant women as a method of preventing or punishing chemical dependency during pregnancy. AMWA encourages all pregnant women to seek prenatal care and believes that breaching the medical confidentiality of these women or otherwise hindering their ability to establish a relationship of trust with their treatment providers will deter women, especially those that may be at high risk for adverse pregnancy outcomes, from receiving prenatal care.

*Amicus Curiae* the **Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN)** represents 350,000 nurses Nationwide and 400 nurses in Oklahoma who are clinically active in hospitals, perinatal facilities, and health centers. AWHONN is a 501(c)3 nonprofit membership organization whose mission is to empower and support nurses caring for women, newborns, and their families through research, education, and advocacy. AWHONN members are committed to the health of women and newborns. Our Vision is to make a difference in the lives of women and newborns. The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) opposes laws and other reporting requirements that result in incarceration or other punitive legal actions against women because of a substance use disorder in pregnancy and the postpartum period. In AWHONN's 2019 Position Statement, "Optimizing Outcomes for Women With Substance Use Disorders in Pregnancy and the Postpartum Period," treatment is recommended in lieu of incarceration for pregnant women and mothers with substance abuse disorder.

*Amicus Curiae* **The Center for Reproductive Rights** (the “Center”) is a global nonprofit organization incorporated and headquartered in New York that uses the power of law to advance reproductive rights as fundamental human rights around the world. The Center has undertaken a variety of initiatives, both in the U.S. and around the globe, to ensure that women do not lose their core rights to autonomy, dignity, or equality when they become pregnant. Since its founding in 1992, the Center has been involved in nearly all major litigation in the U.S. concerning reproductive rights, including as lead counsel for the plaintiffs in *Whole Woman’s Health v. Hellerstedt*. As part of its work to ensure legal guarantees to the full range of reproductive rights, the Center works to promote and ensure non-discriminatory access to safe and respectful maternal health care. The Center has advocated against the shackling of women in prison during childbirth in the U.S. and challenged the detention of postpartum women for failure to pay medical bills in Kenya.

*Amicus Curiae* the **Drug Policy Alliance** (DPA) is a 501(c)(3) nonprofit organization that leads the nation in promoting drug policies that are grounded in science, compassion, health, and human rights. Established in 1994, DPA is a nonprofit, non-partisan organization with more than 20,000 members nationwide. DPA is dedicated to advancing policies that reduce the harms of drug use and drug prohibition, and seeking solutions that promote public health and public safety. DPA is actively involved in the legislative process across the country and strives to roll back the excesses of the drug war, block new, harmful initiatives, and promote sensible drug policy reforms. The organization also regularly files legal briefs as *amicus curiae*, including in other cases pertaining to pregnant women who use drugs. *See, e.g., Loertscher v. Anderson*, 259 F.Supp.3d 902 (2017).

*Amicus Curiae* **Harm Reduction International** is an international NGO in Special Consultative Status with the Economic and Social Council of the United Nations, dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. It promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

*Amicus Curiae* the **Institute for Health and Recovery, Inc.** (IHR) is a statewide service, research, policy, program development and capacity building agency. IHR designs its services based on an understanding of the impact of trauma. IHR’s mission is to develop a comprehensive continuum of care for families, individuals, youth and pregnant and parenting women affected by alcohol, tobacco and other drug use, violence/trauma, mental health challenges and other health issues.

*Amicus Curiae* **Legal Action Center** (LAC) is a national public interest law firm, with offices in New York and Washington, D.C., that performs legal and policy work to fight discrimination against and promote the privacy rights of individuals with criminal records, substance use disorders, and/or HIV/AIDS. LAC has done a tremendous amount of policy advocacy work to expand treatment opportunities for people with substance use disorders and to oppose legislation and other measures that employ a punitive approach, rather than a public health approach, to addiction. LAC has also represented individuals and substance use disorder treatment programs who face discrimination based on inaccurate and outmoded stereotypes about the disease of

addiction. The question posed in this case is of vital concern to LAC's constituency across the country.

*Amicus Curiae* **Hon. Nancy Gertner** (retired, US District Court). Judge Gertner has taught women and the law at Yale Law School, and lectured on that subject in China and Vietnam. She presently teaches at Harvard Law School (criminal law and sentencing). Prior to becoming a judge, she represented pregnant women prosecuted for manslaughter for taking illegal drugs or driving while under the influence of alcohol. She has written and spoken on the issue.

*Amicus Curiae* the **National Alliance for Medication Assisted Recovery** (NAMA Recovery) is an organization of Medication Assisted Treatment (MAT) patients and healthcare professionals supporting quality MAT. Medications to treat opioid use Disorder are often viewed as just a "substitute" drug by child welfare, criminal justice, healthcare professionals and the public. Fifty years of science contradicts that perception and supports MAT as the "Gold Standard" for substance use Disorder treatment. The misperception, however, impacts MAT patients in a variety of ways; they are often seen as drug users that will not accept abstinence. Even more damaging criminal justice responses interfere with patients' comprehensive treatment by nonmedical professionals whose belief that they know what is best is based on incorrect information and assumptions. In jurisdictions where substance abuse by pregnant women is treated as a criminal justice matter, it is therefore typical for MAT patients to find themselves caught in inappropriate care because professionals working in child welfare and criminal justice agencies are ignorant about the science and medicine governing substance use treatment disorder and MAT.

*Amicus Curiae* **National Coalition for Child Protection Reform** (NCCPR) *Amicus Curiae* National Coalition for Child Protection Reform ("NCCPR") is an organization of professionals, drawn from the fields of law, academia, psychology and journalism, who are dedicated to improving child welfare systems through public education and advocacy. NCCPR, a tax-exempt non-profit organization founded at a 1991 meeting at Harvard Law School, is incorporated in Massachusetts and headquartered in Alexandria, Virginia. NCCPR devotes much of its attention to public education concerning widespread public misconceptions about the child protective system and its impact on the children it is intended to serve. Lawyer members of NCCPR also individually have litigated numerous precedential cases involving child protection policies and proceedings. NCCPR is concerned that, contrary to promoting the interests of vulnerable newborn children, a policy which calls for the arrest of those children's mothers based upon urine or blood toxicology screens, or methadone treatment causes children to suffer unnecessary psychological harm and trauma from being separated from their mothers. NCCPR is also concerned that such a separation interferes with the children's constitutionally protected liberty interest in their relationship with their mothers.

*Amicus Curiae* the **Oklahoma Coalition for Reproductive Justice** (OCRJ), founded as a 501(c)(4) in 2010, is a statewide grassroots coalition of organizations and individuals focusing on the advancement of reproductive health, rights and justice in Oklahoma. OCRJ peruses its mission through legislative advocacy, community outreach and education, and litigation. We believe that reproductive justice includes the right to have or not to have a child and respect for families in all their forms. It supports access to sexual education, contraception, abortion care

and pregnancy care as well as to the resources needed to raise children in safe and healthy circumstances, with good schools and healthcare and other elements necessary for bright futures regardless of immigration status. It also supports all pregnancy outcomes. It encompasses respect for all individuals, their partners and families, and for sexuality and for gender differences.

*Amicus Curiae* the **Oklahoma Nurses Association** (ONA) is the professional association for registered nurses in Oklahoma working to empower nurses to improve health care in all specialties and practice settings by working as a community of professional nurses. ONA was founded in 1908 to foster high standards of nursing practice, promote educational development, and support better health care for Oklahomans. Nurses are the largest group of healthcare providers and ONA serves as the voice for the almost 50,000 registered nurses in Oklahoma. We support providing greater access to healthcare for all family members. ONA opposes efforts to subject women to criminal consequences for substance use disorder especially during pregnancy or postpartum.

*Amicus Curiae* the **Oklahoma Criminal Defense Lawyers Association** (OCDLA) works to protect and insure by rule of law those individual rights guaranteed by the Oklahoma and Federal Constitutions in criminal cases. OCDLA has a history of serving as a resource for the Oklahoma Courts providing *Amicus Curiae* opinions on legal questions having broad applicability. This case has statewide implications in that it will affect the constitutional rights of pregnant women in the State of Oklahoma. Therefore, the OCDLA joins as *amicus* to support the district court's holding that the child neglect statutes do not regulate the conduct of pregnant women regarding their pregnancies.

*Amicus Curiae* **Our Bodies Ourselves** (OBOS) provides clear, truthful information about health, sexuality and reproduction from a feminist and consumer perspective. OBOS vigorously advocates for women's health by challenging the institutions and systems that block women from full control over our bodies and devalue our lives. OBOS is noted for its long-standing commitment to serve only in the public interest and its bridge-building capacity. OBOS is dedicated to the autonomy and well being of all women.

*Amicus Curiae* the **Oklahoma Women's Coalition** (OWA) is a nonpartisan organization working to champion the collective power of Oklahomans to advance gender equity and justice. OWA achieves this mission by dismantling systemic injustice through policy change, advocacy and education. OWA honors and amplifies the voices most affected by, and often excluded from, decision and policy-making conversations, envisioning a socially just and equitable world where everyone has equal opportunity to flourish and to achieve the full potential for individuals and community. OWC is committed to policies that keep families together in Oklahoma and help women obtain treatment for substance use, addiction, and post-traumatic stress disorder, rather than approaches that seek to punish such women through the criminal-justice system. OWC has helped lead coalition efforts since 2007 to inform the Oklahoma Legislature of the dangers of criminalizing pregnant women and prevent the adoption of laws that would expose pregnant women dealing with addiction to incarceration.

*Amicus Curiae* **Still She Rises** (SSR) is a non-profit organization in Tulsa that offers legal representation to indigent mothers. SSR defends mothers against their criminal charges as well

as the painful and unnecessary removal of their children and the potential dissolution of their families. In addition to providing traditional courtroom advocacy, SSR works with an interdisciplinary group of specialists to advocate in key areas that affect a woman's success, including mental and physical health services, and targets systemic issues impacting our clients' communities. Many of SSR's clients' involvement in the criminal justice and juvenile systems relates to their concurrent mothering and drug use. In our work defending these clients, SSR regularly encounters the assumption that evidence of a mother's drug use establishes her unfitness to parent or her disregard for her children's well-being. From our clients' experiences and relevant research, SSR knows this assumption to be false. SSR is also familiar with the harms that are inflicted on women, their families and their communities when public health conditions are met with criminal justice responses. SSR is committed to pursuing policies that break the cycle of poverty and instability that so often correlates with the incarceration of a mother. SSR opposes the criminalization of drug use by pregnant and mothering women because that action promotes and reinforces this cycle.

*Amicus Curiae* the **National Council for Incarcerated & Formerly Incarcerated Women and Girls** (National Council) is the only national advocacy organization founded and led by incarcerated and formerly incarcerated women and girls. The experience of National Council members gives them a unique perspective on the issue in the instant case. Based on the experience and observations of its members, the National Council knows that the prison experience increases trauma in women and, if they are mothers, to the children they are separated from. The National Council knows that prosecuting and imprisoning pregnant women causes sociological and individual harms, and is ineffective as a means of deterring and rehabilitating substance users and those with addiction.

*Amicus Curiae* **Dr. Susan F Sharp, Ph. D.\*** is the Emerita David Ross Boyd Professor of Sociology at the University of Oklahoma. She has served on the executive board of the American Society of Criminology and was the founding editor of *Feminist Criminology*, the official journal of the Division on Women and Crime of the American Society of Criminology. Dr. Sharp's research focuses include the incarceration of women and the impact of corrections policies on them and their families. Dr. Sharp is a long time researcher on women and crime and the criminalization of women in Oklahoma in particular. In 2014, she conducted a study and co-authored a report on incarcerated mothers and their children in Oklahoma prisons, one of five such studies over a ten-year period.

*Amicus Curiae* **Dr. Leslie Hartley Gise, M.D.\***, is Clinical Professor of Psychiatry at the John A. Burns School of Medicine, University of Hawai'i. She has extensive experience teaching at the professional level regarding substance use disorders in women, and she worked at a facility treating drug and alcohol addicted pregnant and parenting women for eight years. She is past President of the North American Society for Psychosocial Obstetrics and Gynecology under ACOG

\*institutional affiliation for identification purposes only

CERTIFICATE OF SERVICE

This is to certify that on November 27, 2019, a true and correct copy of the foregoing Motion for Leave to File *Amicus Curiae* Brief was served, by First Class Mail, upon the following:

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