July 31, 2019

District Attorney Neal Pinkston
Hamilton County District Attorney's Office
600 Market Street, Suite 310
Chattanooga, TN 37402

District Attorney Pinkston:

As 168 signatories to this letter, including physicians, health care professionals, public health advocates, legal advocates, faith leaders, experts in reproductive health and gender equality, and many others from Tennessee and around the country, we call on your office to dismiss the charges against Tiffany Roberts, a Chattanooga woman who remains in jail for experiencing a pregnancy loss. While we believe pregnancy, pregnancy outcomes, and attempts to receive medical care should never be the basis for a criminal prosecution or incarceration, it is particularly troubling that this arrest has occurred despite the fact that Tennessee's legislature has clarified that these laws may not be used to prosecute pregnant women.[1]

Our commitment to the constitutional and human rights as well as the health and welfare of pregnant people requires us to speak out against this callous, dangerous and counterproductive prosecution of Ms. Roberts related to her pregnancy loss.

The arrest in this case assumes the impossible -- that pregnant women can guarantee healthy birth outcomes and they should be held criminally liable if they do not. Increasingly, research shows that pregnancy outcomes have far more to do with the economic and social conditions a woman has experienced in the course of her life, rather than with anything she does or does not do while pregnant.[2] We also know that 15 to 20 percent of all pregnancies end in miscarriages

[1] Pursuant to § 39-13-214(c), pregnant women specifically may not be prosecuted for homicide regarding their own embryo or fetus. Pursuant to § 39-13-107(c) "Viable Fetus as a Victim," pregnant women specifically may not be prosecuted under the assault section regarding their own embryo or fetus. Pursuant to § 39-15-402, "Aggravated Child Abuse or Neglect," caselaw is clear that fetuses are not within the definition of "child." Finally, under § 39-13-102 the "First-Degree Murder" statute, application of the law is only appropriate when there is an act resulting in death during "aggravated child abuse/neglect" for which there is none in Ms. Roberts case.

[2] *See* World Health Organization, *Social Determinants of Health*, 2017, http://www.who.int/social_determinants/sdh_definition/en/ ("social determinants of health are the conditions in which people are born, grow, live, work and age."); Kim Krisberg, American Public Health Association,

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and stillbirths, whether or not a pregnant woman smokes cigarettes, drinks alcohol, uses controlled or prescription substances or engages in many of the life activities popularly thought to impact pregnancy outcomes.[3] These economic and social conditions can also be heavily influenced by the criminal system. Women who find themselves subject to punitive treatment are disproportionately women of color and poor white women. Prosecutions of health-related matters like pregnancy, will only increase the number of women who find themselves part of a carceral system instead of a supportive and rehabilitative one.

Every leading medical organization that has addressed the issue of drug use and pregnancy, including the American Medical Association, the American College of Obstetricians and Gynecologists, The American College of Nurse-Midwives, the American Academy of Pediatrics, and the March of Dimes, has concluded that this issue is best addressed through education and evidence-based treatment when necessary for substance use disorder, not through the criminal legal system.[4]

More specifically with regard to drug use, evidence-based research does not support the contention that any of the drugs Ms. Roberts is alleged to have used causes a miscarriage or stillbirth.[5] Like other medical and behavioral health conditions, when someone does have a substance use disorder it is best addressed through treatment. Medical knowledge about dependency and treatment demonstrates that patients do not and cannot simply stop their drug use as a result of threats of arrest or other negative consequences. In fact, threat-based approaches and criminal charges do not protect fetuses, embryos, fertilized eggs or children. Instead, these practices and policies have been shown to deter pregnant and parenting people from seeking health care rather than from using drugs.[6] This is especially counterproductive since studies overwhelmingly demonstrate that pregnancy is a time when women are most motivated to seek treatment because of their concern about the effect of substance use on their pregnancies.[7]

Transforming Public Health Works: Targeting Causes of Health Disparities, 46 The Nation's Health, July 2016 ("at least 50% of health outcomes are due to the social determinants . . .").

[3] *Id.*

[4] *See* Medical and Public Health Statements, attached.

[5] *See* Mishka Terplan et al., *The Effect of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, 30 Journal of Addictive Diseases 1, 3 (2011); *see also* American College of Obstetricians and Gynecologists, *Information About Methamphetamine Use In Pregnancy* (March 2006); Claudia Malacrida, *Complicating Mourning: The Social Economy of Perinatal Death*, 9 Qualitative Health Res. 504, 505 (July 1999).

[6] *See* Poland, et al., *Punishing Pregnant Drug Users: Enhancing the Flight From Care*, 31 Drug and Alcohol Dependence 199 (1993). *See also* Rosa Goldensohn & Rachel Levy, The State Where Giving Birth Can be Criminal, The Nation, Dec. 10, 2014, *available at* https://www.thenation.com/article/state-where-giving-birth-can-be-criminal, (investigative report documenting that Tennessee's "fetal assault" law in effect from 2014-2016 caused pregnant women to avoid health care and flee the state to give birth).

[7] *See e.g.*, Mishka Terplan et al., *Pregnant and Non-Pregnant Women with Substance Use Disorders: The Gap Between Treatment Need and Receipt* 31 J. Addictive Diseases 342-409 (2013); Polly Taylor et al., *Prenatal*

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Unfortunately, many people with alcohol or drug use disorders find it difficult to obtain the help they need and want. There are significant structural and social barriers to obtaining care including stigma and fear of prosecution, forcible detention, and removal of their children.[8] Concern about such consequences discourages women from seeking prenatal and other health care, including treatment for drug dependency.[9] In addition, those women who do seek treatment often have difficulty accessing it: many treatment providers do not serve pregnant women, and Tennessee, unlike many other states, has not created or funded drug treatment programs that address the specialized needs of pregnant women who use drugs.[10]

The prosecution of Ms. Roberts follows in the footsteps of Tennessee's embarrassing enactment of the fetal assault law, which made the state the first to openly criminalize pregnancy. Two years after its enactment and enforcement, it became clear that the law did not deter drug use nor did it reduce rates of opioid withdrawal symptoms in newborns – the law's stated purpose.[11] As a result of the law, in fact, women avoided prenatal care and drug treatment and avoided delivering their babies in hospital settings.[12] Based on clear evidence that the law permitting the arrest of pregnant women for drug use had failed to achieve any of the law's stated goals, the legislature allowed it to sunset.

Screening for Substance Use and Violence: Findings from Physician Focus Groups 11 Maternal and Child Health Journal 241-47 (2007).

[8] *See* Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, 3 Health & Justice 1-15 (2015); Sarah C. M. Roberts & Amani Nuru-Jeter, *Universal screening for alcohol and drug use and racial disparities in Child Protective Services reporting*, 39 J. Behavioral Health Services Research 1199–1216 (2012); Sarah C. M. Roberts & Cheri Pies, *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 Maternal & Child Health J. 333-41 (2011); Ashley H. Schempf & Donna M. Strobino, *Drug use and limited prenatal care: an examination of responsible barriers*, 200 Am. J. Obstetrics & Gynecology 412.e1–412.e10 (2009); Embry M. Howell & Nancy Heiser, *A Review of Recent Findings on Substance Abuse Treatment for Pregnant Women*, 16 J. Substance Abuse Treatment 195–219 (1999); Norma Finkelstein, *Treatment Issues for Alcohol- and Drug-Dependent Pregnant and Parenting Women*, 19 Health & Social Work 7-15 (1994).

[9] *Id.*

[10] Sister Reach, Ibis Reproductive Health & National Advocates for Pregnant Women, *Tennessee's Fetal Assault Law: Understanding its impact on marginalized women*, available at https://bit.ly/2J31JB6. *See also*, *Substance Use During Pregnancy*, Guttmacher Institute, https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy (last visited July 31, 2019) (establishing that health care providers have certain requirements to encourage and facilitate pregnant women to receive counseling only, and are pregnant women are given priority in general treatment centers, none that are specifically focused on pregnancy).

[11] Tony Gonzalez**,** *Tennessee Fetal Assault Bill Fails, Allowing It To Be Struck From State Law*, *NASHVILLE PUB. RADIO* (Mar. 22, 2016), http://nashvillepublicradio.org/post/tennessee-fetal-assault-bill-fails-allowing-it-be-struck-state-law#stream/0.

[12] Rosa Goldensohn & Rachel Levy, *The State Where Giving Birth Can Be Criminal*, THE NATION (Dec. 10, 2014), https://www.thenation.com/article/state-where-giving-birth-can-be-criminal/.

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We ask you not to repeat the same shameful history of prosecuting women related to pregnancy and its outcomes. We call on you, in the interests of maternal, fetal, and child health, to drop the charges against Ms. Roberts and the dangerous and counterproductive prosecution of pregnant women that the laws of Tennessee clearly do not allow.

Signed,

Aarin Michele Williams, Esq.
National Advocates for Pregnant Women, and

CHOICES. Memphis Center for Reproductive Health
Healthy and Free Tennessee
March of Dimes, Tennessee
Just City - Memphis
Knoxville Center for Reproductive Health
Tennessee Advocates for Planned Parenthood
New Voices for Reproductive Justice
Music City Doulas
Sister Reach
Reproductive Rights Coalition
ReVIDA Recovery
All Families Healthcare
Feminist Women's Health Center
Interfaith Voices for Reproductive Justice
PorchSwing Ministries, Inc.
Abortion Care Network
Maine Family Planning
National Alliance for Medication Assisted Recovery
Oasis Lily Ministries International
The Love and Justice Project
Tranquil Therapy
Young Women United

Abigail Leavitt LaBella Ph.D., Postdoctoral Scholar, Vanderbilt University, Nashville TN
Aftyn Behn, LMSW
Aimee Lewis, VP of External Affairs, Planned Parenthood of Tennessee and North Mississippi
Alexandra Chambers, M.Div.
Alexis B. Paulson, MSN, APRN, WHNP-BC
Alys Moore, CNM, Baby+Co birth center and Vanderbilt University Medical Center, Nashville, TN*

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Amy Mulroy, JD., Memphis, TN
Anjelica Ash, Memphis, TN (BLM Memphis)*
Anna Stanley, LPC, LCAS, CCS
April Mallory, LCSW Mt. Juliet, TN
April Pepper PharmD
Arielle Fears, Doula and Student Midwife, Nashville TN
Ashley Myrick BSSW Knoxville, TN
Ashley Stafford LMT
Briana Perry, Co-Executive Director, Healthy and Free Tennessee, Nashville, TN
Brittney Jackson Brown, MTS, MED, Memphis, TN
Brooke Adams, President, Reproductive Rights Coalition, Charlotte, NC
Caira Moody, LPC-MHSP in training, graduate student, East Tennessee State University, Johnson City TN*
Cait Vaughan, Community Organizer, Maine Family Planning, Maine
Cassie Speck, WHNP
Cathie Bird, MA, PsyP, Pioneer, TN
Charity Woods, Managing Director, Interfaith Voices for Reproductive Justice
Charity Woods, Managing Director, Interfaith Voices for Reproductive Justice*
Cherisse A Scott, CEO & Founder, SisterReach
Christine Fox Parker, MA, President PorchSwing Ministries, Inc
Corinne Rovetti APRN-BC
Dr. Bayla Ostrach, MA, PhD, Research Scientist, UNC Health Sciences at MAHEC; Assistant Professor of Family Medicine and Affiliated Faculty of Medical Anthropology, Boston University School of Medicine*
Ellen Wright Clayton, MD, JD, Professor of Pediatrics, Professor of Law, Vanderbilt University Medical Center and Vanderbilt University*
Graci D'Amore, Administrative Assistant, Jane's Due Process, Austin, TX
Gregory Stafford, RN, BSN, Harm Reduction Coordinator, Critical Care OB Nurse Certified, Knoxville TN*
Jane Marcellus, Ph.D. Murfreesboro, TN
Jeralyn B. Major, D. Min.
Jill Alliman, DNP, CNM, APRN
Josh Spickler, Executive Director, Just City, Memphis, TN
Kaitlin Shetler, MSW, Nashville, TN
Kearney Coghlan, JD candidate, Harvard Law School, Cambridge, MA*
Kim S. Lovell, MPH, MBA, Nashville, TN
Lauren Buford, MPH
Lesly-Marie Buer, PhD, MPH; Research Director; Knoxville, TN*
Lindsey Baksh, DNP, WHNP-BC Nashville, TN
Lindsey Seldin, PhD
Louise Vincent MPH, Urban Survivors Union and NC Survivors Union
Paige Rappleye, Office Manager, All Families Healthcare
Pamela Graham of SisterReach*

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Pamela Merritt, Reproaction Co-Director
Racquel B. Martin, Esq., Attorney, Nashville, TN
Renee Schwartz, RN, BSN McDonald, TN
Rev. Vincent J. Lachina, American Baptist Church*
Sahba Mahmoodi Meymand Murfreesboro Tennessee
Sarah Smith, BSN, RN Knoxville, TN
Shannon Hardaway, LPC-MHSP
Shawn Fischer, MPA
Shelby Scott BSW
Sherry Shurden Brewer, J.D., M.Div.
Simone Godwin, MS, MPH, First Aid Collective Knoxville, Science for the People East TN, Knoxville, TN
Tory Mills, Director of Community Engagement, Planned Parenthood of Tennessee & North Mississippi - Knoxville, TN
Victoria Stinson, Special Program Coordinator, Maryland Family Planning Program, Baltimore, MD*
Wendy A. Bach, Professor of Law, University of Tennessee College of Law*
Zachary C Talbott, CADCII, CCS

Alexandria Campbell
Allison Wolf
Amanda Bureau, Memphis, TN
Amanda T., Boston, MA
Amy Morris
Angel Anderson, Memphis TN
Ann Strange, Knoxville, TN
Anna Carella, Nashville, TN
Anna Morris
Ash Baker
Ashlyn Smith, CNA, Eagleville, TN
Barbara Snell
Brittany Miles
Cal Lane
Carol A. Lévy
Carol D Elkins
Carolina Rocha (Nashville, TN)
Caroline Cain, RN
Caroline Rowcliffe, Knoxville, TN
Cassandra Mihalko Murfreesboro, TN
Cassie Speck, WHNP
Chuck Savoy
Damona Balkin
Diana Page, Nashville

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Donna (PhD) and Vance (PhD) Sherwood
Doug Ketchum, Cordova
Eli Stanfield, Knoxville, TN
Elizabeth, EM
Felicia Brown-Williams
Francie Hunt
Gala Gonsalves, Nashville, TN
Galloway Allbright
Genoa Clark, Knoxville, TN
Halden Ingwersen, Knoxville, TN
Heather Ault, Heather Ault Design, Buffalo
Heather Lindsay, Martin, TN
J Caine
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Jane Meyers
Jennifer Kobran
Jenny Cate
Jess Tilley
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Melenka Reed
Meredith Robinson, Nashville, TN
Michelle Colón
Michelle Monroe, Collierville, TN
Mindy Arnett
Molly Rochelson
Mrs. Laura Dunn
Ms. Skiela Johns, Philadelphia, TN
Pamela DeMatteo-Linn, Nashville

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Pat Christopher MS, Germantown TN
Patricia Dishman
Rachel A. Rogers
Rachel Jones, New York
Rachel Moss
Rebecca Terrell, Memphis, TN
Rev. Dr. David W. Butler, retired, Hermitage, TN
Sara Treece, Knoxville, TN
Shannon MB Dixon
Shawnee Crumley, Chattanooga, TN
Sierra Norman, Nashville TN
SPC Cooper, Soriya LPN, ACLS
Susan Moskop
Tereva Parham
Tian Anderson Crossville, TN
Tonya Williams-Love, Cordova
Vernita Gutierrez, San Diego, CA
Victoria Turner Chattanooga,TN
Yomayra Coria

**Institution listed for identification purposes only.*

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