First Department Appellate Division Case No. 2023-03054
New York County Family Court Docket No. NN-15499/18

Court of Appeals
State of New York

In the Matter of

LUKAS. B.,

A Child Under Eighteen Years of Age Alleged Neglected
Pursuant to Article 10 of the Family Court Act

Joe. B.,

Respondent-Appellant,

—against—

New York City Administration for Children's Services,

Petitioner-Respondent.

PROPOSED BRIEF OF *AMICI CURIAE* PREGNANCY JUSTICE, NEW YORK CIVIL LIBERTIES UNION, CENTER ON REPRODUCTIVE RIGHTS AND JUSTICE, IF/WHEN/HOW: LAWYERING FOR REPRODUCTIVE JUSTICE, PLANNED PARENTHOOD EMPIRE STATE ACTS, AND PROFESSORS CYNTHIA GODSOE, SUSAN HAZELDEAN, SARAH KATZ, JANE SPINAK, CARLA SPIVAK, AND SHANTA TRIVEDI

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Dated: March 4, 2025
New York, New York

DISCLOSURE STATEMENTS

Pursuant to 22 N.Y.C.R.R. 500.1[f], Pregnancy Justice hereby discloses that it is a non-profit 501[c][3] organization with no parents, subsidiaries, or affiliates. The New York Civil Liberties Union ("NYCLU") hereby discloses that it is a non-profit 501[c][4] organization and is the New York State affiliate of the American Civil Liberties Union.

The Center on Reproductive Rights and Justice ("CRRJ") hereby discloses that it is a non-profit 501[c][3] organization affiliated with the University of California, Berkeley. CRRJ has no parent corporation, and no publicly held corporation has a 10% or greater ownership interest in CRRJ. If/When/How: Lawyering for Reproductive Justice is a nonprofit 501[c][3], which manages the Repro Legal Defense Fund, a sole member managed LLC, and has no parent or affiliate corporations. Planned Parenthood Empire State Acts ("PPESA"), formerly known as Family Planning Advocates of New York State, is a not-for-profit 501[c][4] organization that represents the five Planned Parenthood affiliates operating in New York State.

Pursuant and 22 N.Y.C.R.R. 500.23[a][4], *amici* state that no other person or entity has contributed to the content, preparation, or submission of this brief. Additionally, no party, party's counsel, or any other person or entity contributed money that was intended to fund preparation or submission of this brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

PRELIMINARY STATEMENT

Amici respectfully submit this brief in support of Respondent-Appellant Mr. B's motion and urge the Court of Appeals to hear this case to address a fundamentally important question: whether New York law can impose a duty on a prospective father to control the actions of his pregnant partner? New York Family Court Act Section 1012 does not and cannot impose such a duty because, under its plain language, a fetus is not a "child." The neglect order at issue is premised on the assumption that Mr. B failed to adequately intervene to stop his partner from using drugs while she was pregnant. However, under New York Law, he did not—and could not—owe a "minimum degree of care" to a fetus. Women's inherent, natural, and inalienable rights over their bodies are protected by both common and constitutional law, and a pregnancy neither diminishes those rights nor assigns them to her partner or the fetus she carries.

Amici also expand upon the important constitutional concerns raised in this appeal and urge the Court to clarify Section 1012's neglect law to prevent further violations. First, a neglect order premised upon the notion that a prospective father must control the actions of his pregnant partner, possibly over her own express objections, significantly threatens women's reproductive autonomy and the inviolability of women's bodily integrity. Second, concluding that a child was neglected due to a pregnant woman's prenatal conduct would have profound

consequences for women's equality, and could raise significant constitutional concerns under Article 1, Section 11 of the New York Constitution, which prohibits governmental discrimination against a person because of "sex, including . . . pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy." Third, placing a prospective father in the impossible position of either controlling his partner's actions or placing himself at risk of losing his own parental rights infringes upon Mr. B's right to family integrity and ultimately harms families and communities.

The Family Court's neglect order and Appellate Division's affirmance undermine the reproductive and bodily autonomy of women as well as the sanctity of the right to parent and should not stand. Forcing fathers to surveil their pregnant partners or face neglect charges threatens the dignity of New York's families, furthers the existing and racially disproportionate harms of the family regulation system[1] on those families, and leads to poorer health outcomes for children, all while irrevocably disrupting familial and community ties.

[1] Scholars increasingly use the terms "family regulation system" or "family policing system" to describe the child welfare system because it includes institutions and practices associated with family surveillance and separation, including ACS or CPS, family courts, and foster agencies. *See* Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation,* The Imprint [June 16, 2020], https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480; *see also* Nancy D. Polikoff & Jane M. Spinak, *Foreword: Strengthening Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being*, 11 Colum J Race & L 427, 431 [2021].

To prevent further erosion of the rights of pregnant women as well as the rights of prospective fathers, and because of the widespread implications for pregnant women, parents, and children, the Family Court's neglect finding and the Appellate Division's affirmance should be reversed, and the Court should take this appeal.

AMICI CURIAE STATEMENT OF INTEREST

Pregnancy Justice, founded in 2001 as National Advocates for Pregnant Women, is a New York based non-profit legal organization that advances and defends the rights of pregnant people, whether they give birth, experience a stillbirth or miscarriage, or have an abortion. Pregnancy Justice advances this mission by: providing direct criminal defense and engaging in nationwide appellate and strategic litigation, advocating for legal and policy change, publishing cutting-edge research, and equipping partners in the field with analysis, training, and narrative framing. Pregnancy Justice has appeared as either counsel-of-record or *amicus curiae* in state and federal cases across the United States regarding the family regulation system, substance use, and pregnancy as well as in cases contesting the use of fetal personhood principles to justify family separation. (*See, e.g., A.V. v Vermont Dep't for Child. and Fams.*, No. 25-cv-00222 [Superior Ct, Lamoille Unit Jan 15, 2025] [co-counsel in family separation case involving civil rights violations of mother's rights to bodily and medical autonomy]; *People In Int.*

of B.C.B. v A.B., No. 24SC539, 2024 WL 4595450 [Colo Oct 21, 2024] [*amicus* in support of Court of Appeals' affirmation of neglect law's heightened standard precluding child protection services from punishing postpartum people for prenatal substance use]; *New Jersey Div. of Child. Prot. & Permanency v C.B.*, 317 A3d 941 [NJ 2024] [*amicus* in support of petition for certification to the New Jersey Supreme Court where Division of Child Protection and Permanency attempted to improperly terminate parental rights for alleged substance use during pregnancy].)

The New York Civil Liberties Union ("NYCLU") is a non-profit membership organization with approximately 85,000 members and supporters and is the New York State affiliate of the American Civil Liberties Union. The NYCLU is devoted to the protection and enhancement of civil rights and liberties as embodied in state and federal law and, to that end, has long been involved in defending the constitutional rights of pregnant people, parents, and children. (*See, e.g.*, *Matter of Sapphire W*, —NYS3d—, 2025 WL 395816 [2d Dept 2025] [*amici curiae* in appeal of family court order requiring unjustified governmental supervision of nonrespondent parent and domestic violence survivor]; *Dray v Staten Island University Hospital*, 227 AD3d 664 [2d Dept 2024] [*amicus* in sex discrimination case of a woman forced to undergo a c-section surgery without her consent]; *Weichman v Weichman*, 199 AD3d 865 [2d Dept 2021] [*amicus* in case involving First Amendment in context of child custody and visitation]; *People v*

Murphy, 188 AD 3d 1668 [4th Dept 2020] [*amicus* in case of a woman sentenced to prison because of a drug treatment court's one-strike rule for pregnant women who relapse].) Defending the due process and equality rights of pregnant New Yorkers, and the rights of New York families to be free from undue government intrusion, are matters of great interest to NYCLU and its members.

The Center on Reproductive Rights and Justice at the University of California, 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. CRRJ maintains that 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.

If/When/How: Lawyering for Reproductive Justice seeks to transform the legal landscape so that everyone can make decisions about their bodies and their families with dignity and free from discrimination, punishment, or coercion. Using the tools of lawyering, including direct legal services, strategic advocacy, applied research, and organizing a nationwide network of attorneys and legal advocates, If/When/How works to interrupt and end state violence in people's reproductive lives. This work includes ensuring family integrity and preventing the trauma that

occurs when the family regulation system intrudes upon the decisions people make about their pregnancies. If/When/How's work with clients directly affected by the family regulation system and other punitive state systems compels opposition to penalizing non-birthing parents, and thus their entire family, for not asserting dominion over their pregnant co-parent to force them to comply with a course of treatment. To permit this would perpetuate interpersonal and state-sanctioned sex-based subordination and control incompatible with reproductive justice.

Planned Parenthood Empire State Acts ("PPESA"), formerly known as Family Planning Advocates of New York State, represents the five Planned Parenthood affiliates operating in New York State. It is the mission of PPESA to ensure access to all sexual and reproductive health care services across the entirety of New York State. PPESA fulfills this mission by advocating for legal and policy changes that support the provision of sexual and reproductive health care and advance reproductive rights and justice for all New Yorkers.

The following *amici* are Professors of Law, including family law, children and the law, and related fields with an expertise in child welfare and parentage: Cynthia Godsoe, Esq. (Professor of Law, Brooklyn Law School), Susan Hazeldean Esq. (Professor of Law and Director of LGBTQ Advocacy Clinic, Brooklyn Law School), Sarah Katz, Esq. (Clinical Professor of Law, Temple University Beasley School of Law), Jane Spinak, Esq. (Edward Ross Aranow Clinical Professor

Emerita of Law, Columbia Law School), Carla Spivak, JD, PhD (Justice David Josiah Brewer Distinguished Professor of Law, Albany Law School), and Shanta Trivedi, Esq. (Assistant Professor of Law and Faculty Director, Sayra & Neil Meyerhoff Center for Families, Children and the Courts, University of Baltimore School of Law).

At the heart of this appeal are important legal questions about the equality and due process rights of pregnant women, the role of prospective fathers in those pregnancies, and the rights of parents to maintain the integrity of their families. *Amici* bring special expertise to the areas of law implicated in this appeal. All named organizations and individuals hope to assist the Court by expanding upon the constitutional questions and public policy concerns this appeal raises.

ARGUMENT

I. Prospective Fathers do not Have a Duty to Control the Actions of Their Pregnant Partners Because a Fetus is Not a Child Under New York Law.

As a preliminary matter, the neglect finding against Mr. B cannot stand because a fetus is not a "child" under the plain language of Section 1012 of the Family Court Act. The Appellate Division incorrectly affirmed the Family Court's neglect finding, concluding that, under Section 1012, Mr. B "neglected the child because he knew or should have known that respondent mother was abusing narcotics while she was pregnant with the child, but failed to take any steps to stop

her drug use" or to exercise a minimum degree of care. (*Matter of L.B.*, 226 AD3d 554, 554 [1st Dept 2024].) Mr. B argues that Section 1012 does not impose any such duty on a prospective father and that the causal connection to harm or imminent risk of harm to the child cannot be established (Resp-App Br at 16-28),[2] but an additional argument this Court should consider is that the lower court's holding incorrectly presumes that there was a "child" or "person" who was neglected to begin with.

The Family Court Act defines a "[c]hild" as "any person or persons alleged to have been abused or neglected." Family Court Act § 1012(b). It further defines a "[n]eglected child" as "a child less than eighteen years of age [i] whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care." Family Court Act § 1012(f). When the Legislature enacts laws concerning fetuses, "it says so explicitly." (*People v Morabito*, 151 Misc 2d 259, 264 [Geneva City Ct. 1992] [noting that criminal defendant could not be found to have endangered the welfare of a child in the case of a fetus who had been exposed to substances while in utero because the definition of child in the criminal law did not apply to a fetus]).

[2] *Amici* adopt the record citation format and a summary of the relevant facts and procedural history from those articulated in Respondent-Appellant's motion for leave to appeal to this Court, dated January 30, 2025, and assigned Court of Appeals motion number 2025-130.

Nowhere in the plain language of Section 1012 is a fetus defined as either a "child" or a "person."

New York courts, in both civil and criminal contexts, have repeatedly refused to construe the terms "child" and "person" to include embryos or fetuses and, thus, have refused to grant statutory or constitutional rights to them.[3] (*See generally People v Jorgensen*, 26 NY3d 85, 89, 91-92 [2015] [holding that, on a statutory basis, a fetus is not a "person" for purposes of the "criminal liability" of "pregnant women" because New York Penal Law defines a person as a "human being who has been born and is alive"]; *Kass v Kass*, 91 NY2d 554, 564 [1998] [holding that cryopreserved pre-zygotes are not "'persons' for constitutional purposes"]; *Byrn v New York City Health & Hosps. Corp.*, 31 NY2d 194, 203 [1972] [noting that "[t]he Constitution does not confer . . . legal personality for the unborn"]; *Wilner v Prowda*, 601 NYS2d 518, 520-21 [NY Sup Ct 1993] [declining to extend habeas corpus to a fetus for custody purposes because neither a father nor the state have a legal interest in the custody of a fetus].)

[3] Assigning legal rights to a fetus—here, by effectively rendering a pregnant woman a child without autonomous existence while simultaneously making her fetus a living person requiring protection from neglect—is a radical legal precept generally referred to as "fetal personhood." *See* Pregnancy Justice, *Unpacking Fetal Personhood: The Radical Tool That Undermines Reproductive Justice*, 4 [Sept 2024], available at https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Fetal-personhood.pdf [last accessed Mar 2, 2025].

Here, the neglect order was not only premised on the problematic assumption that Mr. B had a duty to control his partner's conduct during her pregnancy, but also on the belief that a fetus is a "person" or "child" under Article 10. In truth, a prospective father cannot be held "legally responsible" for the care of a fetus in a pregnant woman's womb; under a plain reading of Section 1012, Mr. B therefore did not and could not owe a "minimum degree of care" to the fetus. The definitions of "child" and "child neglect" should not be improperly expanded to include fetuses because such expansion is unmoored from any framework of interest articulated within New York's neglect laws. Any instance where there is such expanded surveillance of the womb overrides the rights of the pregnant woman to full jurisdiction over her body, particularly where, as here, men are deputized to be the agents of that surveillance.[4] Such an expansion would create a perverse incentive for prospective fathers to control pregnant women's behavior by threatening them with a neglect finding if they *fail* to do so.

Should the plain meaning of Section 1012 be interpreted to give the family court expansive power to consider prenatal conduct in post-birth neglect

[4] Indeed, "[c]ases punishing prospective fathers for not protecting the fetus from the mother are based on the factual impossibility of separating a fetus and a pregnant person and represent an expansion of the state's police power to control pregnant people's actions and an egregious overreach by the state calling for a form of patriarchal control unprecedented in recent U.S. history." Pregnancy Justice, Harming Fathers: How the Family Court System Forces Men to Regulate Pregnancy, 6 [2022], https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/harming-fathers-with-appendixes-UPDATED.pdf [last accessed on Mar 3, 2025].

determinations in contradiction of New York's statutory and constitutional frameworks, the subsequent integration of fetal personhood principles into family court decisions would set a dangerous legal precedent—one without any apparent limiting principle—that would improperly extend the State's police powers over both fetuses and the pregnant women who carry them.

II. Punishing a Prospective Father for Allegedly Failing to Control the Actions of His Pregnant Partner Raises Serious Concerns Under Federal and New York Constitutional Law.

The rights to personal bodily autonomy, reproductive autonomy, women's equality, and family integrity are fundamental human rights protected by both New York and federal law. Pregnant women are not excepted from these entitlements.

A. The Neglect Order Infringes Upon Rights to Bodily and Reproductive Autonomy.

The rights to personal bodily autonomy and reproductive autonomy are a fundamental human right. The U.S. Supreme Court has recognized that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others." (*Union Pac. Ry. Co. v Botsford*, 141 US 250, 251 [1891] [recognizing common law right to bodily autonomy of an injured woman who refused to undergo an invasive medical examination at the defendant's request]). It is indisputable that in New York, under the Due Process Clause of

Article 1, § 6 of the New York Constitution,[5] "every individual of adult years and sound mind" has a "right to determine what shall be done with [their] own bod[ies]." (*See Schloendorff v Soc'y of New York Hosp.*, 211 NY 125, 129 [1914]; *Rivers v Katz*, 67 NY2d 485, 493 [1986] [quotation marks omitted]).

Pregnant women are no exception. As the United States Supreme Court has made clear, "a State may not give to a man the kind of dominion over his wife that parents exercise over their children." (*Planned Parenthood of Se. Pennsylvania v Casey*, 505 US 833, 898 [1992] [*overruled on other grounds*].) Putative fathers have no legal right or obligation to restrict the liberty and personal autonomy of pregnant women in any way. Indeed, the U.S. Supreme Court has consistently recognized that a person's fundamental rights are not diminished by pregnancy, even when the State itself purports to act in the interest of protecting fetal health and life. (*See Cleveland Bd. of Ed. v LaFleur*, 414 US 632, 640–42 [1974]; *Ferguson v City of Charleston*, 532 US 67, 81–86 [2001]). New York courts have similarly noted "[a] woman's established right to exercise virtually exclusive control over her own body" during pregnancy. (*Kass*, 663 NYS2d at 585–86.) The

[5] Article I, § 6 of the New York Constitution provides that "no person shall be deprived of life, liberty or property without due process of law." Protection for certain fundamental reproductive rights is implicit within this crucial constitutional clause. (*Hope v Perales*, 83 NY2d 563, 575 [1994]). The New York State Constitution has historically provided an independent and even broader basis for a fundamental right of privacy than that provided under federal law, affording New Yorkers expansive rights in matters of personal bodily integrity. *See Schloendorff*, 211 NY at 129; *Rivers*, 67 NY2d at 493.

Fourteenth Amendment also protects a woman's right to become pregnant and to seek to carry a pregnancy to term without penalty. (*See Carey v Population Servs. Int'l*, 431 US 678 [1977]; *Eisenstadt v Baird*, 405 US 438, 453 [1972] [the Fourteenth Amendment ensures the 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."])

Under the Due Process Clause of the Fourteenth Amendment, state actions that burden the fundamental rights of pregnant women to bodily and reproductive autonomy are subject to strict scrutiny and cannot be justified absent a compelling state interest that is narrowly tailored to advance that interest. (*See Cleveland Bd. of Ed. v LaFleur*, 414 US 632, 639–640 [1974]; *Skinner v Oklahoma*, 316 US 535 [1952].) As set forth *infra*, Section III.C., punitive approaches to substance use disorder during pregnancy necessarily fail this exacting constitutional scrutiny as there is unanimous medical consensus that such approaches *undermine* maternal and fetal health.

Here, the Family Court cannot deputize prospective fathers to do indirectly what it cannot do directly. Thus, any neglect order premised upon the notion that a prospective father failed to sufficiently control his pregnant partner's conduct and medical decision-making, possibly even over her express objections, significantly threatens women's bodily integrity and reproductive autonomy rights. Pregnant

women's rights should not be subsumed to partners and the law should not require partners to act as the arbiters of those rights.

B. The Neglect Order Violates Equal Protection and Discriminates on the Basis of Sex.

Article 1, Section 11 of the New York Constitution makes it unlawful for "the state or any agency or subdivision of the state," including the New York Family Courts, to discriminate against any person because of "sex, including . . . pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy . . . in their civil rights . . . pursuant to law." (NY Const Art 1 § 11[a]). This prohibition against sex discrimination was added to the New York Constitution with the recent passage of the Equal Rights Amendment ("ERA").

A family court decision that requires a prospective father to control the conduct of a woman because she is pregnant with his child violates the ERA's prohibition against pregnancy discrimination. Imposing a requirement that a pregnant woman's actions be controlled by either the family court or a third party, like a prospective father, amounts to differential treatment of women based on pregnancy. While no New York court has interpreted Section 11's protections in this context because the constitutional amendment is so new, its explicit definition of "sex, including . . . pregnancy" means that the State, and any state subdivision, must, *at least*, satisfy strict scrutiny to successfully defend any action that would subject women to differential treatment because of their pregnancies. (*See People v*

Aviles, 28 NY3d 497, 502 [2016] [pre-ERA decision holding that, "[w]here governmental action disadvantages a suspect class . . . the conduct must be subjected to 'strict scrutiny,' and will be upheld only if the government can establish a compelling justification for the action"; *but see Darrin v Gould*, 540 P2d 882, 872 n8 [Wash 1975] [holding, after the passage of Washington's ERA naming "sex" as a protected category, that the "ERA absolutely prohibits discrimination on the basis of sex and is not subject to even the narrow exceptions permitted under traditional 'strict scrutiny'"]). To justify such an order here, a family court would at minimum need to advance a narrowly tailored compelling government interest. The family court has not done so.

The amendment to Section 11 of Article 1 "in relation to equal protection"[6] was specifically introduced "to prohibit the application of laws and governmental action that discriminate on the basis of an enumerated protected category."[7] The purpose of the ERA is to "realize the promise of legal equality and justice for all New Yorkers and to create a clear mechanism to address and defend against violations of those rights." (ERA Sponsor's Memo.) The ERA is explicitly "intended to apply to any action with force of law, including action by the

[6] 2023 NY Senate Bill No. 108, New York Two Hundred Forty-Sixth Legislative Session, "Senate Introduction" [Jan. 9, 2023].

[7] 2023 NY Senate Bill No. 108, New York Two Hundred Forty-Sixth Legislative Session, "New York Committee Report" [Feb. 1, 2023] (hereinafter "ERA Sponsor's Memo").

executive or legislative branch, local governments, or any subdivision thereof" (*Id*.) Section 11's prohibition against unequal treatment in the context of sex discrimination must be read to give effect to this clear legislative intent. (*See Matter of Hoffman v New York State Ind Redistricting Commn*, 41 NY3d 341, 351–52 [2023] [relying on sponsors' memoranda to characterize the purpose of a state constitutional amendment]).

The Court should therefore hear this appeal and carefully consider the sweeping implications that affirming a neglect order—particularly one premised upon the notion that a prospective father should be forced to control the actions of his pregnant partner—will have for the rights of pregnant women who appear before New York's family courts going forward.

C. The Neglect Order Infringes Upon Rights to Family Integrity.

The family court's interpretation of Section 1012 placed Mr. B in the impossible position of either controlling his partner's actions or placing himself at risk of losing his parental rights. "Parents . . . have a constitutionally protected liberty interest in the care, custody and management of their children," and "children have a parallel constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association." (*Southerland v City of New York*, 680 F3d 127, 142 [2d Cir 2012] [citing *Tenenbaum v Williams*, 193 F3d 581, 593 [2d Cir 1999]; *Kia P. v*

McIntyre, 235 F3d 749, 759 [2d Cir 2000]; *Troxel v Granville*, 530 U.S. 57, 65–66 [2000].) The constitution thus affords both parents and children vast protections for the integrity of their familial relationships and the family court's interpretation of Section 1012 unlawfully infringes upon those rights in numerous ways.

First, forcing men to surveil their partners' actions during pregnancy exacerbates the harms the family regulation system has already caused in discrepantly impacted communities.[8] Requiring a prospective father to control the actions of his pregnant partner is likely to erode the trust that partners have in one another and, at worst, may increase the risk of intimate partner violence. Women in the United States who are pregnant or who have recently given birth are more likely to be murdered than to die from obstetric causes, with most of those deaths linked to the lethal combination of intimate partner violence and firearms.[9]

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[8] New York Civil Liberties Union, *Racism at Every Stage: Data Shows How NYC's Administration for Children's Services Discriminates Against Black and Brown Families* [June 2023], available at https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates#:~:text=Currently%20in%20New%20York%2C%20Black,investigates%20are%20Black%20or%20Brown [last accessed Mar 2, 2025].

[9] Rebecca Lawn & Karestan Koenen, *Homicide is a leading cause of death for pregnant women in US*, BMJ [Oct. 19, 2022]. Sanctuary for Families, New York's leading service provider and advocate for survivors of gender violence, describes domestic violence as "a pattern of abusive behavior in an intimate partner, dating or family relationship, where the abuser exerts power and control over the victim" and notes that "1 in 4 women in the United States will be subjected to domestic violence during her lifetime." Sanctuary for Families, *The Problem: Domestic Violence*, https://sanctuaryforfamilies.org/gender-violence/domestic-violence/ [last accessed Mar 2, 2025]; *see also* Sara Chodosh, *The Killings of Young Mothers* [Dec 9, 2024], https://www.nytimes.com/interactive/2024/12/09/opinion/pregnant-women-homicide.html [last accessed Mar 2, 2025].

Concluding that prospective fathers should in any way control the behavior of their pregnant partners reinforces the patriarchal notion that men are legally entitled to, and in some cases should, dominate and control women.

Second, rather than relying upon punitive or carceral responses to keep families together, substance use during pregnancy should be treated as an issue of maternal health, not as a ground for family separation. There is unanimous medical consensus that punitive approaches to substance use during pregnancy *undermine* maternal and fetal health.[10] By responding to substance use during pregnancy with punitive measures, the State will deter pregnant women from disclosing their conditions and obtaining treatment.[11] This inevitably leads to increased risk of complications for the mother and fetus, ultimately harming the entire family unit while simultaneously widening the gap between mothers, partners, and healthcare providers.[12]

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[10] Laura J. Faherty, et al., *Consensus Guidelines and State Policies: The Gap Between Principle and Practice at the Intersection of Substance Use and Pregnancy*, 2 Am J Obstetrics & Gynecology MFM [2020]; Pregnancy Justice, *Medical and Public Health Group Statements Opposing Prosecution and Punishment of Pregnant People* [June 21, 2023], https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/Medical-Public-Health-Statements-2023.pdf.

[11] Rebecca Stone, *Pregnant Women and Substance Use: Fear, Stigma, and Barriers to Care*, 3 Health & Just 1 [2015].

[12] Office of National Drug Control Policy, Substance Use Disorder in Pregnancy: Improving Outcomes for Families (2022), https://legislativeanalysis.org/wp-content/uploads/2022/11/Substance-Use-During-Pregnancy-and-Family-Care-Plans.pdf.

Additionally, data suggests that non-punitive policies, such as those that promote treatment for prenatal substance use, are associated with a forty-five percent decrease in overdose deaths for pregnant women, and policies that prioritize access to treatment are associated with more prenatal care use and healthier birth outcomes.[13] By contrast, punitive policies that rely on family policing agencies or law enforcement to control prenatal drug use are associated with no decrease in prenatal substance use, less use of prenatal care and addiction treatment resources, and more children entering foster care.[14] This stark contrast highlights the need for care and not punishment to support healthy families.

Third, threatening prospective fathers with family separation limits their ability to provide meaningful support to pregnant women who are suffering from substance use disorder when that support is, in fact, welcomed or desired. Partners can play a supportive role to their partners who need substance use treatment, including at the developing Family SUD Program at Lincoln Hospital in the South Bronx where the primary focus of the program is family unity. Indeed, one of the goals of that program and similar programs is to bring "the whole family into comprehensive non-judgmental care" which "holds the most promise for parents'

[13] Andra Wilkinson, *What's Working (or Not) in State Policies for Substance Use During Pregnancy*, CHILD TRENDS [Aug. 9, 2024], https://www.childtrends.org/publications/state-policies-substance-use-pregnancy.

[14] *Id.*

and children's well-being."[15]

Parents should be able to rely on one another for support without the threat of a neglect finding if their efforts do not meet undefined, court-imposed standards of what it means to be supportive. Allowing fathers to support their pregnant partners without fear of punishment, including those with substance use disorders, can help alleviate stress for pregnant women and provide a sense of shared responsibility which, in turn, can promote more positive pregnancy experiences and stronger parenting units.

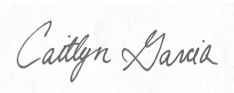
CONCLUSION

Amici respectfully urge the Court to grant Respondent-Appellant Mr. B's motion for leave to appeal to address the important question of whether a prospective father can be required to control the actions of his pregnant partner to avoid risking his parental rights. This Court has an opportunity not only to center the personhood of pregnant women, but also to protect women's reproductive autonomy, equality rights, and the integrity of New York families by reversing the Family Court's neglect finding and the Appellate Division's affirmance.

[15] NYC Health + Hospitals, *Mayor Adams Announces Plans to Open Substance Use Disorder Clinic for Expecting and Parenting Families*, PRESS RELEASES [Mar 26, 2024], https://nychealthandhospitals-appservice-test.azurewebsites.net/pressrelease/mayor-adams-announces-plans-to-open-substance-use-disorder-clinic-for-expecting-and-parenting-families/; *see also* Tova Walsh, et al., *Present as a partner and a parent: Mothers' and fathers' perspectives on father participation in prenatal care*, Infant Ment Health J 386, 399 [2021].

Dated: March 4, 2025
New York, New York

Respectfully submitted,



PREGNANCY JUSTICE
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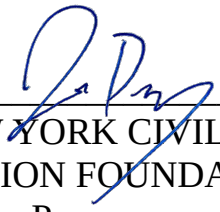

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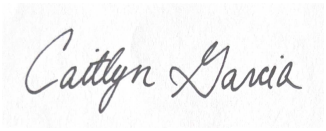
NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 N.Y.C.R.R. Part 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type:	A proportionally spaced typeface was used, as follows:
Name of typeface:	Time New Roman
Point size:	14
Line spacing:	Double
Word Court:	The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of cases and authorities, proof of service, certificate of compliance, and corporate disclosure is 5,143 words.

Dated: March 4, 2025



Caitlyn Garcia

COURT OF APPEALS
STATE OF NEW YORK

IN THE MATTER OF LUKAS B., A Child Under Eighteen Years of Age Alleged Neglected Pursuant to Article 10 of the Family Court Act	:
Joe B., *Respondent-Appellant,*	:
against	:
Commissioner of the Administration for Children's Services, *Petitioner-Respondent*.	:

AFFIRMATION OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

I, CAITLYN GARCIA, affirm this 4th day of March, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

1. I am not a party to the above-captioned action, am 18 years of age or older, and am an employee of Pregnancy Justice.

2. I served one (1) true and correct copy of the Notice of Motion for Leave to Appear as Amici Curiae in Support of Motion for Leave to Appeal; the

Affirmation of Caitlyn Garcia in Support of Motion for Leave to Appear as Amici Curiae; and the Proposed Brief of Amici Curiae, included as Exhibit A to the Affirmation of Caitlyn Garcia, via FedEx Overnight Delivery on March 4, 2024, on

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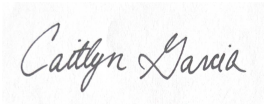
Dated: March 4, 2025
New York, New York



Caitlyn Garcia