

SUPREME COURT OF THE
STATE OF WASHINGTON

Case No. 94151-3

Court of Appeals No. 45586-2-II

STATE OF WASHINGTON
Respondent,

v.

MELISSA MCMILLEN
Appellant.

IN RE PERSONAL RESTRAINT PETITION OF
MELISSA MCMILLEN,
Petitioner.

MOTION OF LEGAL VOICE, ACLU OF WASHINGTON,
BIRTH RIGHTS BAR ASSOCIATION, NATIONAL
ADVOCATES FOR PREGNANT WOMEN, THE CENTER ON
REPRODUCTIVE RIGHTS & JUSTICE, OPEN ARMS
PERINATAL SERVICES, AND THE MIDWIVES
ASSOCIATION OF WASHINGTON STATE FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF

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Legal Voice respectfully moves pursuant to RAP 10.1(e), 10.6, and 13.4(h) to file the attached brief of *amicus curiae* in support of this Petition for Review. To support this motion, *amici* offer the following information:

I. IDENTITY AND INTEREST OF AMICUS CURIAE

a. Legal Voice

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 protecting pregnant persons’ rights, including their rights to make decisions about their pregnancies, to be protected from workplace discrimination, and to be free from shackling if they are incarcerated and pregnant or in labor. 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 and birthing women. Legal Voice opposes, and has successfully challenged, prosecutions of women for their pregnancy outcomes and works to end punitive measures that undermine the humanity and legal rights of all pregnant women.

b. American Civil Liberties Union of Washington

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters dedicated to the preservation of civil liberties. The ACLU has consistently advocated

for women's rights in pregnancy and other health care choices, and for adherence to safeguards in criminal cases such as the right to proof beyond a reasonable doubt of each element of the offense. The ACLU has also worked for years against overcriminalization. Furthermore, the ACLU has participated as amicus curiae in numerous cases in Washington involving the rights of women, in the criminal justice context and in other contexts.

c. Birth Rights Bar Association

The Birth Rights Bar Association (BRBA) is a nonprofit, nonpartisan professional association focused on the support, networking, and education of attorneys dedicated to promoting the rights associated with childbirth, including the rights to physical liberty, bodily integrity, and due process of law. BRBA's interest in this case arises from its potential implications for the rights of childbearing persons. BRBA is concerned about the case's possible effects on parents' decisions regarding place of birth, the due process of law, and the fair administration of law with respect to out-of-hospital births and adverse birth outcomes.

d. National Advocates for Pregnant Women

National Advocates for Pregnant Women (NAPW) is the only organization in the United States that works exclusively to defend the civil, constitutional, and human rights of pregnant people. NAPW is a nonprofit public interest law organization that provides legal representation and consultation, and conducts social science research in cases where women have been targeted for prosecution, child welfare proceedings, and forced medical interventions because of their pregnancies. Founded in 2001,

NAPW has been involved as amicus or direct counsel in hundreds of cases throughout the country where prosecutors and the courts have attempted to use the criminal law to punish pregnant women for the decisions they make, the state of their health, and their pregnancy outcomes.

e. The Center on Reproductive Rights & Justice

The Center on Reproductive Rights and Justice at UC Berkeley School of Law (CRRJ) seeks to realize reproductive rights and advance reproductive justice by bolstering law and policy advocacy efforts, furthering scholarship, and influencing academic and public discourse. Our work is guided by the belief that all people deserve the social, economic, political, and legal conditions necessary to make genuine decisions about reproduction. And, we believe no one should have to fear arrest or jail for taking their health matters into their own hands including ending their own pregnancy, suffering a pregnancy loss, or seeking medical help in these situations.

f. Open Arms Perinatal Services

Open Arms Perinatal Services is a Seattle-based non-profit organization that provides services that support, educate, respect, honor, and empower women and their families from pregnancy through birth to early parenting. Working in the Puget Sound region since 1997, Open Arms is the only non-profit in Washington State providing doula birth support services specifically for low-income women. The organization serves over 200 new mother and over 200 babies each year. Carefully pairing clients with trained doulas who are a cultural and/or language match wherever possible, Open Arms has served more than 2500 clients and conducted more than 18,000 home visits

to help improve maternal and infant health. As an organization that works with birthing people who experience significant health disparities, especially women of color, Open Arms believes that supportive services and evidence-based public health approaches, not criminalization, are the appropriate response to perinatal loss.

g. The Midwives Association of Washington State

The Midwives Association of Washington State (MAWS) is a professional membership organization of licensed midwives and certified nurse midwives. Its associate members include a wide range of health care professionals, students, and families who share an interest in midwifery. Founded in 1983, the mission of MAWS is to promote reproductive health and well-being through the development and support of the practice of midwifery. In addition to ensuring the development of the profession, MAWS works to promote public awareness of and access to midwifery, and to protect birthing options and informed choice for all Washingtonians. As midwives are the primary health care providers for planned out-of-hospital births, MAWS is concerned that criminalization of pregnancy loss, especially associated with an unplanned home birth, threatens reproductive autonomy and the significant public health improvements and cost savings associated with the provision of midwifery care in pregnancy.

II. FAMILIARITY WITH ISSUES

Amici have reviewed and is familiar with the consolidated Petition for Review submitted to this Court, the ruling of the Court of Appeals, Division II, and the proceedings below. *Amici* understand the scope of argument presented by the parties, the issues involved in this matter and will not repeat arguments raised by the parties.

III. ISSUES TO BE ADDRESSED BY AMICI

Amici will address the widespread and serious impact Division II's ruling will have on pregnant Washingtonians. Seeking felony murder and felony abandonment convictions in this context has dangerous implications for women's constitutional privacy during the birthing process and immediately after labor. As the attached brief explains, prosecutions like this one threaten all pregnant people, because stillbirth and perinatal loss are often unexplained. And people of color and low-income women are especially at risk, as they are more likely to experience health disparities during pregnancy and birth. Because the question of whether every birth that takes place outside of a medical facility may result in a criminal investigation is so counter to science, public health, and law, *Amici* write to urge this Court to accept review.

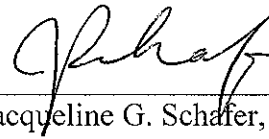
IV. WHY AMICUS BRIEFING WILL ASSIST THE COURT

Amici bring significant experience in advocacy against using the criminal justice system to address problems of individual and public health. The attached amicus brief will aid the Court by providing additional legal arguments as to why this prosecution violates the law and threatens constitutional rights. It also provides social science research that further explain the significant issues of public importance presented by this case.

V. CONCLUSION

For the reasons stated above, *Amici* respectfully requests this Court's permission to file the attached brief of *amicus curiae* in this matter.

Respectfully submitted on April 18, 2017.



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CERTIFICATE OF SERVICE

I, Sara Ainsworth, declare that on April 18, 2017, I served this Motion, along with the Brief of *Amicus Curiae*, to the following Counsel for the parties, via email with permission of counsel.

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