

NO. 07-2481

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Larry Norris and Patricia Turensky,

Appellants,

v.

Shawanna Nelson,

Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
THE HONORABLE JAMES M. MOODY
UNITED STATES DISTRICT JUDGE**

BRIEF OF *AMICI CURIAE*

**NATIONAL PERINATAL ASSOCIATION, AMERICAN COLLEGE OF
NURSE MIDWIVES, AMERICAN MEDICAL WOMEN'S ASSOCIATION,
REBECCA PROJECT FOR HUMAN RIGHTS, ET AL., IN SUPPORT OF
APPELLEE AND AFFIRMANCE OF THE
DISTRICT COURT'S JUDGMENT**

CHARLES M. KESTER
THE KESTER LAW FIRM
P.O. Box 184
Fayetteville, AR 72702
(479) 582-4600

CYNTHIA SOOHOO
DANA SUSSMAN*
STEPHANIE TOTI
**CENTER FOR REPRODUCTIVE
RIGHTS**
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600
*Bar Admission Pending

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Each of the *amici curiae* herein is either an individual or a not-for-profit organization. None has any parent corporation. None has any capital stock held by a publicly traded corporation.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	v
DESCRIPTION OF <i>AMICI CURIAE</i>	ix
INTRODUCTION	1
ARGUMENT	1
I. SHAWANNA NELSON’S EIGHTH AMENDMENT RIGHTS WERE VIOLATED WHEN HER LEGS WERE SHACKLED TO OPPOSITE SIDES OF A BED WHILE SHE WAS LABORING TO DELIVER A NINE POUND, SEVEN OUNCE CHILD.....	1
II. THE PRACTICE OF SHACKLING PREGNANT WOMEN DURING THE BIRTHING PROCESS VIOLATES THE CONTEMPORARY STANDARDS OF DECENCY THAT SERVE AS THE TOUCHSTONE FOR THE EIGHTH AMENDMENT’S INTERPRETATION.....	6
A. The Weight of Authority in the United States Views the Practice of Shackling Pregnant Women During the Birthing Process as Cruel, Inhuman, and Degrading Treatment.....	6
B. The International Community Views the Shackling of Pregnant Women During the Birthing Process as Cruel, Inhuman and Degrading Treatment.....	9
C. The Practice of Shackling Pregnant Prisoners During the Birthing Process is Prohibited in England	13
III. SHAWANNA NELSON’S EIGHTH AMENDMENT RIGHT TO BE FREE OF SHACKLES DURING THE BIRTHING PROCESS WAS CLEARLY ESTABLISHED AT THE TIME OF MS. NELSON’S INCARCERATION.....	14

CONCLUSION.....	15
CERTIFICATE OF COMPLIANCE.....	16
CERTIFICATE OF SERVICE.....	17

TABLE OF AUTHORITIES

CASES

<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	12
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976).....	2-3, 12
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994).....	3, 5
<i>Haslar v. Mergerman</i> , 104 F.3d 178 (8th Cir. 1997).....	6 n.1
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993).....	2-3
<i>Hope v. Pelzer</i> , 536 U.S. 730, 738 (2002).....	2-6, 14
<i>Jackson v. Bishop</i> , 404 F.2d 571 (8th Cir. 1968).....	2, 9
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	12
<i>Monell v. Department of Social Services</i> , 436 U.S. 658 (1977).....	6 n.1
<i>Nelson v. Correctional Medical Services</i> , 2007 WL 1703562 (E.D. Ark. June 11, 2007).....	5-6
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	9, 12
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001).....	14
<i>Trop v. Dulles</i> , 356 U.S. 86, 99-100 (1958).....	2
<i>Wilson v. Seiter</i> , 501 U.S. 294 (1991).....	3
<i>Women Prisoners of the District of Columbia v. District of Columbia</i> , 877 F. Supp. 634, 699 (D.D.C. 1994).....	7-8, 14

CONSTITUTIONS AND STATUTES

United States Constitution art. VI.....	10 n.6
---	--------

United States Constitution amend. VIII.....	2
CAL. PENAL CODE § 3423 (2006).....	8
55 ILL. COMP. STAT. 52-15003.6 (2000).....	8
Second Chance Act of 2008, Pub. L. No. 110-199, 122 Stat. 657 (2008).....	9
VT. STAT. ANN. tit. 28, § 801a (2005).....	8

FOREIGN AND INTERNATIONAL LEGAL AUTHORITIES

<i>Avci and Others v. Turkey</i> , App. No. 77191/01 (ECHR Apr. 16, 2007).....	12
Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 46, 39 U.N. GAOR Supp. (No.51), U.N. Doc. 10 A/39/51 (1984).....	9-10
Convention on the Elimination of All Forms of Discrimination Against Women art. 12(2), Mar. 1, 1980, 1249 U.N.T.S. 13.....	10 n.5
Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2000), 13, 10 th General Report.....	12-13
European Convention for the Protection of Human Rights and Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.....	12
<i>Henaf v. France</i> , App. 65436/01 (ECHR Feb. 27, 2004).....	12
International Covenant on Civil and Political Rights, art. 7, GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).....	10
International Covenant on Economic, Social and Cultural Rights, art. 12(1), Dec. 16, 1966, 993 U.N.T.S. 3.....	10 n.5

Her Majesty’s Prison Service, Guidance Notes on Gender Specific Standards for Women Prisoners, Annex A to PSO 4800 (2008), http://www.hmprisonservice.gov.uk/resourcecentre/psispsos/listpsos/index.asp?startrow=51	13-14
Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 25(2), U.N. Doc. A/810 (1948).....	10 n.5
United Nations Committee Against Torture, Conclusions and Recommendations: United States of America, ¶ 33 U.N. Doc. CAT/C/USA/CO/2 (2006).....	11
United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties 12, available at http://www.unhchr.ch/pdf/report.pdf	10-11
United Nations Human Rights Committee, Concluding Observations: United States of America, 87th Sess., ¶ 33, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (2006).....	11
United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/1 Annex 1, E.S.C. res. 663C, U.N. ESCOR, 24 th Sess., Supp. No. 1, U.N. Doc. E/3048.....	11-12

OTHER AUTHORITIES

American College of Obstetricians and Gynecologists, <i>Letter in Opposition to Shackling</i> , June 12, 2007; available at http://www.acog.org/departments/dept_notice.cfm?recno=18&bulletin=4631	5-7
American Public Health Association, <i>Standards for Health Services in Correctional Institutions</i> (2003).....	7
Amnesty International USA Report, <i>Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women</i> (2008), http://www.amnestyusa.org/women/custody/shackling.html	8 n.3
Arkansas Department of Corrections Administrative Directive 04-08 (2004).....	8

Center for Reproductive Rights and University of Toronto International
 Programme on Reproductive and Sexual Health Law,
*Bringing Rights to Bear: An Analysis of the Work of U.N. Treaty
 Monitoring Bodies on Reproductive and Sexual Rights* (2002).....10

Letter from Denise V. Lord, Assoc. Comm’r, Maine Department of Corrections
 (Feb. 20, 2007).....8 n.3

Letter from Michelle A. Donaher, Dir. of Female Offender Services,
 Massachusetts Department of Corrections (Nov. 30, 2007).....8 n.3

Luisa Dillner, *Shackling Prisoners in Hospital Contravenes
 International Law*, 312 BRIT. MED. J. 200 (1996).....13

Oklahoma Department of Corrections, “Security Standards for Transportation of
 Offenders,” Operation Policy No. 040111.....8 n.3

Oregon Department of Corrections, Policy No. 40.1.1(H)(1)(d), *available at*
[http://www.oregon.gov/DOC/PUBSER/rules_policies/
 docs/40.1.1.pdf](http://www.oregon.gov/DOC/PUBSER/rules_policies/docs/40.1.1.pdf).....8 n.3

DESCRIPTION OF *AMICI CURIAE*

Amici curiae submit this brief because they believe that the shackling of pregnant women during the birthing process is a barbaric practice that endangers the health and safety of mothers and their children and constitutes cruel and unusual punishment in violation of the Eighth Amendment to United States Constitution. The following individuals and organizations join this brief as *amici curiae*:

Amicus Curiae **National Perinatal Association** (“NPA”) promotes the health and well-being of mothers and infants, enriching families, communities and our world. NPA seeks to increase access to comprehensive health care, as this has an immeasurable impact on birth outcomes. NPA opposes all policies which endanger the well-being of infants or their mothers.

Amicus Curiae **American College of Nurse Midwives** (“ACNM”), with roots dating back to 1929, is the oldest women’s health care organization in the United States. ACNM sets standards for the education, certification, and practice of certified nurse-midwives and certified midwives; supports research; administers and promotes continuing education programs; creates liaisons with state and federal agencies and members of Congress; and advocates for programs and policies that improve the health status of women and their families. The mission of ACNM is to promote the health and well-being of women and newborns within

their families and communities through the development and support of the profession of midwifery, practiced by certified nurse-midwives and certified midwives. The philosophy inherent in the profession states that the midwives believe every individual has the right to safe, satisfying health care with respect for human dignity and cultural variations.

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 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 **Rebecca Project for Human Rights** ("RPHR") is a national legal and policy organization that advocates for public policy reform, justice and dignity for vulnerable families. RPHR strives to reform child welfare, criminal justice, and other policies that impact the lives of vulnerable families. RPHR frames the pervasiveness of violence against women and girls, the draconian conditions that too often characterize maternal incarceration, and the dearth of

access to health and healing for mothers and their children, as fundamental human rights violations. RPHR advocates for policies and practices that honor, strengthen, and render whole the sacred ties between parents and children and affirms the worth and dignity of every child, every family.

Amicus Curiae **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based non-profit organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a broad range of innovative programs to promote human rights in the United States and around the world, including human rights monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates has produced more than 50 reports documenting human rights practices in more than 25 countries; and educated more than 10,000 students and community members on human rights issues. The Advocates previously has submitted *amicus curiae* briefs in numerous cases that raise issues of international human rights law.

Amicus Curiae **Asian American Legal Defense and Education Fund** (“AALDEF”), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

Amicus Curiae **The Bronx Health Link, Inc.** (“TBHL”) is a clearinghouse of information for members of the health and human service delivery system of the Bronx. TBHL works extensively with the community and health care providers to identify gaps in perinatal health care and improve both women’s early entry into prenatal care and the reproductive health of area women, and in particular, African American and Latina mothers and babies at greatest risk. TBHL educates women about the importance of prenatal and postpartum medical screening and care, as well as of self-care and care of their infants—in particular, through workshops and information that empower women to make informed choices.

Amicus Curiae **Center for Constitutional Rights** (“CCR”), established in 1966, is a non-profit legal and educational organization dedicated to protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR has a long history of advocating on behalf of civil rights and advancing the protection of international human rights in the courts and through education and outreach, including in the areas of criminal and gender justice.

Amicus Curiae **Citizens for Midwifery** (“CfM”) is a national, consumer-based non-profit organization promoting the Midwives Model of Care. Our members are primarily parents and concerned citizens, but include doulas, childbirth educators, midwifery students, midwives, nurses, and physicians. CfM works to improve access to the evidence-based, respectful Midwives Model of

Care in all settings for all women. This kind of care is based on basic human rights and also recognizes that freedom of movement during labor and delivery is essential for optimal outcomes for mothers and babies.

Amicus Curiae **The Columbia Law School Sexuality & Gender Law Clinic** (“the Clinic”) works both domestically and globally to secure equality and challenge gender bias and discrimination through legal and public policy advocacy. The Clinic regularly files amicus briefs in litigation related to women’s rights and has expertise in international law as well as American constitutional jurisprudence. The Clinic has particular interest in insuring that pregnant women receive full protection from the domestic and international standards that underlie the Eighth Amendment’s cruel and unusual punishment prohibition.

Amicus Curiae **The D.C. Prisoners’ Project of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs** (“the Prisoners’ Project”), a non-profit public interest organization, has sought to eradicate discrimination and fully enforce the nation’s civil rights laws for over 40 years. Since The Prisoners’ Project was founded in 1989, it has engaged in broad-based class action litigation, improving medical and mental health services, reducing overcrowding, and seeking to improve overall conditions at correctional facilities wherever D.C. inmates are held.

Amicus Curiae **Death Penalty Focus** is one of the largest nonprofit advocacy organizations in the nation dedicated to the abolition of capital punishment through public education; grassroots and political organizing; original research; media outreach; local, state and nationwide coalition building; and the education of religious, legislative and civic leaders about the death penalty and its alternatives. Founded in 1988, Death Penalty Focus has eleven active volunteer chapters in California and more than 25,000 members and supporters nationwide.

Amicus Curiae **Florida Institutional Legal Services, Inc.** (“FILS”) is a non-profit legal services office representing indigent institutionalized people in Florida. Its primary focus over its 30-year history has been a mix of individual and class action litigation in federal and state courts on behalf of Florida prisoners.

Amicus Curiae **Human Rights Advocates** is a non-profit California corporation founded in 1978 with national and international membership. It has Special NGO Consultative Status in the United Nations. It endeavors to ensure that the most basic protections are afforded to everyone and has participated as amicus curiae in cases involving individual and group rights where international standards offer assistance in interpreting both state and federal statutes at issue.

Amicus Curiae **International Women's Human Rights Law Clinic** (“IWHR”) at the City University of New York School of Law has, since its founding in 1992, engaged with students and with partners in the United States and

abroad in advocacy and litigation relating, *inter alia*, to international law norms and measures respecting violence against women. IWHR has been instrumental in bringing about the recognition of various forms of violence as torture and cruel, inhuman or degrading treatment or punishment as within the obligations of the United States under the Convention Against Torture.

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

Amicus Curiae **Law Students for Reproductive Justice** (“LSRJ”) is a non-profit network of law students, professors, and lawyers dedicated to ensuring the future of reproductive justice by educating, organizing, and supporting law students on 75 campuses throughout the United States and Canada. LSRJ is filling in the gaps left by formal legal education—providing educational materials and in-person learning experiences to ensure that budding legal experts have the

information and skills they need to pursue reproductive justice in any realm—from the bar to the bench, school board meetings to congressional hearings, and beyond.

Amicus Curiae **Legal Momentum** is the oldest legal advocacy organization in the United States dedicated to advancing the rights of women and girls. Legal Momentum is committed to enforcing the right to be free from cruel and unusual punishment, and to women’s reproductive rights and access to health care.

Amicus Curiae **Maternal and Child Health Access** (“MCHA”) is dedicated to ensuring meaningful access to health and social services for low-income women and their families and to helping them improve the quality of their lives. MCHA provides information, support, and technical assistance to health and social service organizations, assists individual women to achieve healthy pregnancies and obtain quality health care for themselves and their children, and educates policymakers and the general public to improve the health and social services systems for all low income women and families and to benefit the entire community in which we live.

Amicus Curiae **National Advocates for Pregnant Women** (“NAPW”) works to secure the human and civil rights, health and welfare of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable, such as low income women and women of color. NAPW seeks to ensure that women do not lose their constitutional and human rights as a result of pregnancy, that families are not needlessly separated, and that pregnant and

parenting women have access to a full range of reproductive health services. By focusing on the rights of pregnant women, NAPW broadens and strengthens the reproductive justice, drug policy reform, and other interconnected social justice movements in America today.

Amicus Curiae **National Asian Pacific American Women’s Forum** (“NAPAWF”) is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian and Pacific Islander (API) women and girls. Founded in 1996, NAPAWF’s vision includes strengthening communities to reflect the social, political and economic concerns and perspectives of API women and girls; inspiring leadership and promoting the visibility and participation of API women and girls in the political process and within the broader national and international women’s movement; and creating a vehicle for API women to connect with others across the country. NAPAWF is committed to ending violence against women, securing reproductive justice for all, and advancing immigrant and refugee rights.

Amicus Curiae **The National Conference of Black Lawyers (NCBL), New York Chapter** is an association of lawyers, scholars, judges, legal workers, law students and legal activists. The NCBL's mission is to serve as the legal arm of the movement for black liberation; to protect human rights; to achieve self-determination of Africa and African communities in the diaspora; and to work in

coalition to assist in ending oppression of all peoples. NCBL is a bar association but its program concerns matters of critical concern to the broader black community.

Amicus Curiae **National Economic and Social Rights Initiative** (“NESRI”) works with social movements and community organizations to advance the principle that fundamental human needs, such as health, education, housing and decent work, are fundamental human rights. NESRI’s right to health program advocates for universal protection of the right to health, irrespective of race, gender, class or social status (including incarceration), and promotes the use of human rights standards and criteria in the development of policies that may impact health.

Amicus Curiae **The National Latina Institute for Reproductive Health** is a non-profit organization that seeks to ensure the fundamental human right to reproductive health care for Latinas, their families and their communities through education, policy advocacy, and community mobilization.

Amicus Curiae **The National Lawyers Guild** is a national non-profit legal and political organization of lawyers, law students, legal workers, and jailhouse lawyers dedicated to using the law as an instrument for social amelioration. Founded in 1937 as an alternative to the then racially segregated American Bar Association, the Guild has taken an integral role in representing social and political

movements. The Guild has a long history of monitoring institutional practices which result in the abuse of incarcerated women, here in the United States and around the world. A significant number of our members advocate in the area of women's rights and prisoners' rights.

Amicus Curiae **The National Organization for Women Foundation** ("NOW Foundation") is devoted to furthering women's rights through education and litigation. The NOW Foundation is affiliated with the National Organization for Women, the largest women's rights organization in the United States, with a membership of over 500,000 contributing women and men in more than 550 chapters in all 50 states and the District of Columbia.

Amicus Curiae **National Partnership for Children of Incarcerated Parents**, ("NPCIP") is a network of hundreds of organizations in 14 states, seeking policy reforms that best serve the parent and child relationship when a parent is in prison. NPCIP is particularly concerned with the issue of restraining pregnant women in transport, labor and child birthing, as it causes potential medical harm to mother and child, along with certain psychological trauma for the mother and future relationships with the infant she is separated from, in many cases. NPCIP represents approximately 50-100 organizations in each of the following states: Washington State, Montana, Minnesota, Michigan, Pennsylvania. Connecticut, Massachusetts, South Carolina, Tennessee, Arkansas, Texas, and Arizona.

Amicus Curiae **The Northwest Women’s Law Center** is a non-profit public interest organization dedicated to advancing the legal rights of all women through litigation, education, legislation and the provision of legal information and referral services. Since its founding in 1978, the Law Center has served as a regional expert and leading advocate on reproductive freedom and the right to healthcare. Toward that end, the Law Center works to protect and ensure access to safe and humane medical care for incarcerated women, and to advance the legal rights of all pregnant and birthing women. Part of this work includes monitoring the practices and policies of women’s correctional facilities in the Northwest states to ensure that no facility in the Northwest engages in shackling of laboring women.

Amicus Curiae **Penal Reform International** (“PRI”) is an international non-governmental organization working on penal and criminal justice reform worldwide. PRI seeks to achieve penal reform by promoting the development and implementation of international human rights instruments in relation to law enforcement and prison conditions; the elimination of unfair and unethical discrimination in all penal measures; and a reduction in the use of imprisonment throughout the world.

Amicus Curiae **Physicians for Reproductive Choice and Health** (“PRCH”), founded in 1992, is a national non-profit organization whose mission is to improve the delivery of the full range of reproductive health services. The active

membership and board of PRCH consist of some of the most renowned academic, research, and clinical physicians in the country, including leaders in the field of obstetrics and gynecology. PRCH exists to enable concerned physicians to take a more active and visible role in support of universal health. PRCH is committed to ensuring that all people have the knowledge, access to quality services, and ability to make informed health decisions. PRCH has an immediate and substantial interest in this litigation and in protecting women's reproductive health.

Amicus Curiae **Prison Legal News** ("PLN") is a non-profit, charitable corporation that publishes a nationally distributed monthly journal of the same name. Since 1990, PLN has reported on news, recent court decisions, and other developments relating to the civil and human rights of prisoners. Approximately sixty-five percent of PLN subscribers are state and federal prisoners.

Amicus Curiae **Prisoners' Legal Services of New York** ("PLS") is a non-profit organization that has been providing civil legal services to indigent inmates in New York State prisons for over thirty-two years. PLS receives over 10,000 requests for assistance annually. There are over 2,500 females currently in the custody of the New York State Department of Correctional Services. PLS' mission is to insure that New York State inmates receive fair, just, lawful and humane treatment while incarcerated. PLS seeks, wherever possible, to resolve complaints administratively and, in meritorious cases that cannot be resolved administratively,

PLS serves as legal counsel in both state and federal courts. PLS has a significant interest in ensuring the protection of the constitutional rights of all prisoners.

Amicus Curiae **SisterSong Women of Color Reproductive Health Collective** is an organization dedicated to amplifying and strengthening the collective voices of Indigenous women and women of color to ensure reproductive justice through securing human rights. SisterSong educates women of color on reproductive and sexual health and rights, and works to improve access to health services, information and resources that are culturally and linguistically appropriate through the integration of the disciplines of community organizing, self-help and human rights education.

Amicus Curiae **Southwest Women's Law Center** is a non-profit legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center seeks to promote access to comprehensive reproductive health care information and services and to eliminate discrimination and disparities in access to necessary and appropriate health care services based on gender.

Amicus Curiae **Texas Jail Project** (“TJP”) is dedicated to improving the conditions for the thousands of people—mothers, fathers, brothers, sons, sisters and daughters—incarcerated in Texas jails. TJP was originally formed to improve conditions for incarcerated women by publicizing the widespread abuse and neglect in the 258 county facilities in Texas.

Amicus Curiae **The Uptown People’s Law Center** (“the Law Center”) is a non-profit legal clinic founded in 1975. In addition to providing legal representation, advocacy, and education for poor and working people in the Uptown neighborhood of Chicago and surrounding communities, the Law Center also provides legal assistance to people housed in Illinois’ prisons in cases related to their confinement. The Law Center has provided direct representation to over 100 prisoners, including several cases before this Court.

Amicus Curiae **Women’s Law Project** (“WLP”) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Throughout its history, the WLP has played a leading role in the struggle to safeguard access to safe and appropriate reproductive health care for women as required by the U.S. Constitution and international human rights law.

Individual *Amici Curiae*: **Bassina Farbenblum**, Practitioner in Residence, International Human Rights/Rule of Law Project, Seton Hall School of Law; **Donna Lee**, Associate Professor of Law, CUNY School of Law; **Hope Lewis**, Professor of Law, Northeastern University School of Law; **Jules Lobel**, Professor of Law at the University of Pittsburgh Law School and Vice President of the Center for Constitutional Rights; **Hope Metcalf**, Lecturer-in-Law, Yale Law School; **Sarah Paoletti**, Clinical Supervisor and Lecturer, Transnational Legal Clinic, University of Pennsylvania School of Law; **Thomas H. Speedy Rice**, Professor of Practice, Transnational Law Institute at Washington and Lee Law School; **Penny Venetis**, Clinical Professor of Law and Co-Director of the Constitutional Litigation Clinic, Rutgers Law School.*

* Affiliations are listed for identification purposes only.

INTRODUCTION

The use of shackles to restrain a pregnant woman during the birthing process is a barbaric practice that needlessly inflicts excruciating pain and humiliation. It is condemned by leading medical and public health associations, federal and state law, and international human rights treaties. There can be no doubt that such an unnecessary and wanton infliction of pain and suffering violates the Eighth Amendment's prohibition on cruel and unusual punishments.

In this case, Shawanna Nelson was shackled to a hospital bed while she endured the labor pains necessary to deliver a nine pound, seven ounce baby. For more than an hour leading up to her son's birth, she was completely immobilized by the shackles, which bound her legs to opposite sides of the bed. When the sheets became soiled with human waste, she was unable to abate the humiliating and unsterile condition. The shackles caused her both physical pain and emotional trauma, and jeopardized the safety of the child she was about to deliver.

Because it was clearly established at the time that Shawanna Nelson gave birth that the practice of shackling a pregnant prisoner during labor violates the Eighth Amendment, this Court must affirm the judgment of the district court.

ARGUMENT

I. Shawanna Nelson's Eighth Amendment Rights Were Violated When Her Legs Were Shackled to Opposite Sides of a Bed While She Was Laboring to Deliver a Nine Pound, Seven Ounce Child.

The Eighth Amendment prohibits the infliction of "cruel and unusual

punishments.” U.S. Const. amend XIII. In addition to proscribing torture and other methods of punishment considered to be barbaric, the Eighth Amendment proscribes “punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society or which involve the unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976) (internal quotation marks and citations omitted). That is because the Eighth Amendment embodies “broad and idealistic concepts of dignity, civilized standards, humanity, and decency.” *Id.* at 102 (quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968)). Indeed, “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” *Trop v. Dulles*, 356 U.S. 86, 99-100 (1958); accord *Hope v. Pelzer*, 536 U.S. 730, 738 (2002).

In *Estelle*, the Supreme Court relied on these principles in holding that the Eighth Amendment imposes an obligation on prison officials to provide medical care for prisoners in their custody. *See Estelle*, 429 U.S. at 103. It reasoned that failure to provide such care could result in pain and suffering that serves no valid penological purpose. *Id.* “The infliction of such unnecessary suffering,” the Court declared, “is inconsistent with contemporary standards of decency.” *Id.* In subsequent cases, the Supreme Court extended the rationale of *Estelle*, holding that prison officials have an obligation to ensure humane conditions of incarceration and to protect prisoners in their custody from any substantial risks of harm to their health or safety. *See, e.g., Hope*, 536 U.S. at 737; *Helling v. McKinney*, 509 U.S.

25, 31-32 (1993); *Wilson v. Seiter*, 501 U.S. 294, 297-302 (1991).

The Eighth Amendment analysis applied to prisoner treatment not specifically part of a prisoner's sentence consists of both an objective and a subjective component. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The objective component focuses on the seriousness of an alleged deprivation, as measured by contemporary standards of decency. *See id.* The subjective component focuses on the state of mind of the prison official whose acts or omissions caused the alleged deprivation. *See id.* In cases concerning conditions of confinement, the requisite state of mind is "deliberate indifference." *See id.*; *Helling*, 509 U.S. at 32; *Wilson*, 501 U.S. at 303; *Estelle*, 429 U.S. at 104. Deliberate indifference is akin to recklessness; it exists if a prison official knows of and disregards a substantial risk to prisoner health and safety. *Farmer*, 511 U.S. at 836-37. The existence of this subjective state of mind can be inferred "from the fact that the risk of harm is obvious." *Hope*, 536 U.S. at 738; *accord Farmer*, 511 U.S. at 842.

In *Hope*, the Supreme Court held that both the objective and subjective components of an Eighth Amendment violation were present when a prisoner, Larry Hope, alleged that he was twice handcuffed to a hitching post as a sanction for disruptive conduct. On the first occasion, Mr. Hope alleged that he was handcuffed to the hitching post for two hours. *Hope*, 536 U.S. at 734. Because he was only slightly taller than the hitching post, his arms were above shoulder height

and grew tired from being handcuffed so high. Whenever he tried moving his arms to improve his circulation, the handcuffs cut into his wrists, causing him pain and discomfort. *Id.* On the second occasion, Mr. Hope alleged that he was handcuffed to the hitching post for seven hours. *Id.* at 734-35. The correctional officers made him take off his shirt, and he remained shirtless all day while the sun burned his skin. *Id.* He was given water only once or twice and was allowed no bathroom breaks. *Id.* at 735. The Supreme Court held that, based on the facts alleged by Mr. Hope, the Eighth Amendment violation was “obvious.” *Id.* at 738. It stated:

Despite the clear lack of an emergency situation, the respondents knowingly subjected him to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. The use of the hitching post under these circumstances violated the basic concept underlying the Eighth Amendment, which is nothing less than the dignity of man.

Id. at 738 (internal quotation marks and footnotes omitted).

Similarly, both the objective and subjective components of an Eighth Amendment violation are present here, where Shawanna Nelson, a non-violent offender who was not considered a security threat, had both of her legs shackled to a hospital bed while she was laboring to deliver a nine pound, seven ounce child. As set forth below, the practice of shackling a pregnant woman during the birthing process violates contemporary standards of decency and subjects the pregnant woman to the unnecessary and wanton infliction of pain. *See infra* at 6-14. As a

result, it satisfies the objective component of an Eighth Amendment violation. *See Farmer*, 511 U.S. at 834. The practice of shackling a pregnant woman during the birthing process also poses a substantial risk of harm to the woman’s health and safety. *See* SA 169-70 (expert testimony of Dr. Cynthia Frazier, Fellow of the American College of Obstetricians and Gynecologists); American College of Obstetricians and Gynecologists, Letter in Opposition to Shackling, June 12, 2007 (“ACOG Letter”), available at http://www.acog.org/departments/dept_notice.cfm?recno=18&bulletin=4631. Because the trier of fact could reasonably conclude that that risk is obvious, and because Officer Turensky admitted being aware of that risk, SA 64, 201-02, the subjective component of an Eighth Amendment violation—deliberate indifference—is also satisfied. *See Hope*, 536 U.S. at 738; *Farmer*, 511 U.S. at 836-37, 842.

The similarities between Ms. Nelson’s experience while shackled during labor and Mr. Hope’s experience while handcuffed to the hitching post confirm that Officer Turensky’s actions in shackling Ms. Nelson’s legs to opposite sides of a bed violated the Eighth Amendment. Neither Mr. Hope nor Ms. Nelson posed an immediate security threat. *Compare Hope*, 536 U.S. at 738 with SA 197; *Nelson v. Correctional Medical Services*, 2007 WL 1703562, *10 (E.D. Ark. Jun. 11, 2007). Mr. Hope suffered unnecessary pain caused by the handcuffs and the restrictions they placed on his movements. Ms. Nelson suffered unnecessary pain caused by the shackles and the restrictions they placed on her movements, which pain was

amplified by the birthing process. *Compare Hope*, 536 U.S. at 738 with SA 61; *Nelson*, 2007 WL 1703562 at *3, 10. As a result of being deprived of bathroom breaks, Mr. Hope was subjected to the risk of particular discomfort and humiliation. As a result of being shackled while in labor, Ms. Nelson soiled her bedsheets with human waste, which caused her actual discomfort and humiliation, and also subjected her to the risk of infection. *Compare Hope*, 536 U.S. at 738 with SA 217-19. In addition, both Ms. Nelson and the child she was about to deliver were subjected to the risk of serious physical injury. *See* SA 169-70; ACOG Letter. Accordingly, the Eighth Amendment violation is just as “obvious” in the instant case as it was in *Hope*.¹ *Cf. Hope*, 536 U.S. at 738.

II. The Practice of Shackling Pregnant Women During the Birthing Process Violates the Contemporary Standards of Decency that Serve as the Touchstone for the Eighth Amendment’s Interpretation.

A. The Weight of Authority in the United States Views the Practice of Shackling Pregnant Women During the Birthing Process as Cruel, Inhuman, and Degrading Treatment.

There is widespread recognition in the United States that the practice of shackling women during the birthing process constitutes cruel, inhuman, and

¹ Appellants’ reliance on *Haslar v. Mergerman* for a contrary proposition is misplaced. *Haslar* dealt with official capacity claims, not individual capacity claims like the ones at issue in this case. *See Haslar v. Mergerman*, 104 F.3d 178, 179-80 (8th Cir. 1997). As a result, in order to prevail, the plaintiff had the burden of demonstrating that the correctional officers who kept him shackled to a hospital bed despite the injury that the shackles caused him acted pursuant to an official policy or custom. *See Monell v. Department of Social Services*, 436 U.S. 658, 694 (1977). He could not meet that burden because the official policy of Missouri’s Department of Corrections required the correctional officers to remove the shackles if they posed a threat of harm to the plaintiff. *Id.* at 180. The Court specifically declined to comment on whether the correctional officers’ use of the shackles, in violation of official policy, constituted a violation of the Eighth Amendment because that question was not necessary to the disposition of the case. *Id.*

degrading treatment. The nation’s leading medical and public health organizations condemn the practice as dangerous, unnecessary, and dehumanizing. The American College of Obstetricians and Gynecologists (“ACOG”) has stated that “[t]he practice of shackling an incarcerated woman in labor may not only compromise her health care but is demeaning and unnecessary. . . . Women [who have been shackled during labor] describe the inability to move to allay the pains of labor, the bruising caused by chain belts across the abdomen, and the deeply felt loss of dignity.” *See* ACOG Letter. The American Public Health Association (“APHA”), which promulgates standards for the provision of health care in prisons, warns that “[w]omen must never be shackled during labor and delivery.” APHA, *Standards for Health Services in Correctional Institutions* 108 (2003).² The only federal court to publish a decision on the issue prior to this case concluded that the practice of shackling pregnant women ran afoul of contemporary standards of decency and violated the Eighth Amendment. *See Women Prisoners of the District of Columbia v. District of Columbia*, 877 F. Supp. 634, 699 (D.D.C. 1994), *aff’d in part, rev’d in part on other grounds*, 93 F.3d 910 (D.C. Cir. 1996). The court stated that shackling pregnant prisoners during the third trimester of pregnancy “poses a risk so serious that it violates contemporary standards of decency” and that “the physical limitations of a woman in the third

² Released on April 13, 2003, the third edition of this manual is a model for quality prison health care based on fundamental principles in public health and legal guidelines set forth in the U.S. Constitution, international treaties and court rulings.

trimester of pregnancy and the pain involved in delivery make complete shackling redundant and unacceptable in light of the risk of injury to a woman and baby.” *Id.*

Many states have expressed their repugnance for the practice of shackling pregnant women during the birthing process by enacting laws or adopting policies that forbid it. California, Illinois, and Vermont have enacted laws prohibiting the practice of shackling pregnant prisoners in nearly all circumstances. Cal. Penal Code § 3423 (2006); 55 Ill. Comp. Stat. 52-15003.6 (2000); Vt. Stat. Ann. tit. 28, § 801(a) (2005). In addition, the Departments of Corrections of fourteen states—Arkansas, Connecticut, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, New York, Oklahoma, Oregon, Rhode Island, Washington, and Wyoming—and the District of Columbia have written policies that prohibit the use of restraints on prisoners during the birthing process.³ Arkansas’ shackling policy was reformed following the events at issue in this case. Since May 2004, the use of restraints on prisoners during the birthing process has been prohibited.⁴ Ark. Dep’t of Corrections Admin. Dir. 04-08 (2004).

³ See Amnesty Int’l USA, Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women (2008), <http://www.amnestyusa.org/women/custody/shackling.html>; Letter from Denise V. Lord, Assoc. Comm’r, Me. Dep’t of Corrections (Feb. 20, 2007); Letter from Michelle A. Donaher, Dir. of Female Offender Services, Mass. Dep’t of Corrections (Nov. 30, 2007); Okla. Dep’t of Corrections, “Security Standards for Transportation of Offenders,” Operation Policy No. 040111; Ore. Dep’t of Corrections, Policy No. 40.1.1(H)(1)(d), available at http://www.oregon.gov/DOC/PUBSER/rules_policies/docs/40.1.1.pdf.

⁴ The change in policy by the Arkansas Department of Corrections belies any claim by Appellants that the use of shackles on prisoners during the birthing process is necessary in all cases for security reasons.

Moreover, in April 2008, President Bush signed the Second Chance Act into law. Second Chance Act of 2008, Pub. L. No. 110-199, 122 Stat. 657 (2008). It recognizes that the practice of shackling pregnant prisoners is generally unacceptable and requires that all federal correctional facilities justify the use of shackles during the birthing process with documented security concerns. *Id.*

In sum, the nation's leading medical and public health organizations, the federal courts, seventeen states, and the U.S. Congress all condemn the practice of shackling pregnant prisoners during the birthing process, demonstrating that the practice violates contemporary standards of decency.

B. The International Community Views the Shackling of Pregnant Women During the Birthing Process as Cruel, Inhuman and Degrading Treatment.

Both the Supreme Court and this Court have long recognized the relevance of international law and the laws of other countries in ascertaining contemporary standards of decency for Eighth Amendment purposes. *See Roper v. Simmons*, 543 U.S. 551, 576 (2005). (“[A]t least from the time of the Court’s decision in *Trop*, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”); *Jackson*, 404 F.2d at 579.

The practice of shackling pregnant prisoners during the birthing process is prohibited as cruel, inhuman, or degrading treatment by two major international human rights treaties—the Convention Against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment (“Torture Convention”), G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984) and the International Covenant on Civil and Political Rights (“ICCPR”), GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at art. 7, U.N. Doc. A/6316 (1966).⁵ The Torture Convention has been ratified by 136 nations including the United States, which ratified the treaty in 1994.⁶ See Office of the U.N. High Comm'r for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties 12 (“U.N. Status of Ratifications”), available at <http://www.unhchr.ch/pdf/report.pdf>. Compliance with its provisions is officially monitored by the Committee Against Torture. See Center for Reproductive Rights and University of Toronto International Programme on Reproductive and Sexual Health Law, *Bringing Rights to Bear: An Analysis of the Work of U.N. Treaty Monitoring Bodies on Reproductive and Sexual Rights* 21-22 (2002). In 2006, the Committee Against Torture issued concluding observations to the United States expressing concern

⁵ In addition to the prohibitions of cruel, inhuman, or degrading treatment set forth in the Torture Convention and the ICCPR, other international conventions and declarations impose an obligation on states to protect women during pregnancy and childbirth. For example, the Universal Declaration of Human Rights declares that motherhood is “entitled to special care and assistance.” G.A. Res. 217A (III), art. 25(2), U.N. Doc. A/810 (Dec 10, 1948). Similarly, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) requires that mothers be given special protection before and after childbirth. ICESCR, art. 12(1), Dec. 16, 1966, 993 U.N.T.S. 3. The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) likewise requires that states “ensure women appropriate services in connection with pregnancy, confinement, and the post-natal period.” CEDAW, art. 12(2), Mar. 1, 1980, 1249 U.N.T.S. 13.

⁶ Pursuant to the Supremacy Clause of the U.S. Constitution, once a treaty is ratified, it has status akin to that of federal law. See U.S. Const. art. VI (“The Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”).

that the United States was not in compliance with the treaty because some of its jurisdictions had yet to abolish the practice of shackling pregnant prisoners during the birthing process. *See* U.N. Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, ¶ 33 U.N. Doc. CAT/C/USA/CO/2 (2006).

The ICCPR has been ratified by 152 countries including the United States, which ratified the treaty in 1992. *See* U.N. Status of Ratifications. Compliance with its provisions is officially monitored by the Human Rights Committee. *Id.* at art. 28. Like the Committee Against Torture, the Human Rights Committee recently issued concluding observations to the United States expressing concern over jurisdictions that had not yet abolished the practice of shackling pregnant prisoners during the birthing process. *See* Concluding Observations of the Human Rights Committee: United States of America, 87th Sess., ¶ 33, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (2006). It recommended that the United States “prohibit the shackling of detained women during childbirth” in order to come into compliance with the treaty. *Id.*

The U.N. Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules”), first promulgated in 1955, prohibit the use of shackles on prisoners except in exceptional circumstances. Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/1 Annex 1, E.S.C. res. 663C, U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. E/3048, Rule 33(c).

Furthermore, the Standard Minimum Rules require that prisons make special accommodations for the care and treatment of pregnant women. *Id.* at art. 23(1). The U.S. Supreme Court has frequently relied on the Standard Minimum Rules for guidance in interpreting the protections of the Eighth Amendment. *See, e.g., Roper*, 543 U.S. at 554; *Estelle*, 429 U.S. at 103-110; *Atkins v. Virginia*, 536 U.S. 304, 335 (2002).

Article 3 of the European Convention on Human Rights, which entered into force in 1953 and prohibits torture and “inhuman or degrading treatment or punishment,” has been interpreted by the European Court of Human Rights to proscribe the use of shackles during the hospitalization of a prisoner unless the prisoner poses a serious risk to security. European Convention for the Protection of Human Rights and Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221; *see Henaf v. France*, App. No. 65436/01 (ECHR Feb. 27, 2004); *Avci and Others v. Turkey*, App. No. 77191/01 (ECHR Apr. 16, 2007). The U.S. Supreme Court has relied on decisions of the European Court of Human Rights as persuasive authority in interpreting the protections afforded by the Bill of Rights and the Fourteenth Amendment. *See, e.g., Lawrence v. Texas*, 539 U.S. 558, 573 (2003). In addition, in 2000 the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment characterized the limited instances in which pregnant prisoners have been shackled in Europe as “completely unacceptable.” CPT/Inf (2000), 13, 10th General Report, ¶ 27. The

Committee declared that “[o]ther means of meeting security needs can and should be found.” *Id.*

In sum, the Convention Against Torture and the ICCPR, both of which were ratified by the United States over a decade ago, the U.N. Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Protection of Human Rights and Freedoms, and the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment all condemn the practice of shackling pregnant prisoners during the birthing process, further demonstrating that the practice violates contemporary standards of decency.

C. The Practice of Shackling Pregnant Prisoners During the Birthing Process is Prohibited in England.

The phrase “cruel and unusual punishments” was taken directly from the English Declaration of Rights of 1688. *See Roper*, 543 U.S. at 577. As a result, England’s “experience bears particular relevance [in interpreting the Eighth Amendment] in light of the historic ties between our countries and in light of the Eighth Amendment’s own origins.” *Roper*, 543 U.S. at 577. Since 1996, the Prison Service of England and Wales has forbidden the use of restraints on all pregnant prisoners visiting the hospital for pre-natal care and for labor and delivery. Luisa Dillner, *Shackling Prisoners in Hospital Contravenes International Law*, 312 BRIT. MED. J. 200, 200 (1996). Specifically, Prison Service Order 4800 mandates that “[p]regnant women are not handcuffed after their arrival at a hospital or clinic. . . . Women in active labour are not handcuffed either en

route to, or while in, hospital” unless extenuating circumstances exist.⁷ See Her Majesty’s Prison Service, Guidance Notes on Gender Specific Standards for Women Prisoners, Annex A to PSO 4800 (2008), available at <http://www.hmprisonservice.gov.uk/resourcecentre/psispos/listpsos/index.asp?startrow=51>.

III. Shawanna Nelson’s Eighth Amendment Right to be Free of Shackles During the Birthing Process Was Clearly Established at the Time of Ms. Nelson’s Incarceration.

At the time of Shawanna Nelson’s incarceration, the relevant law was clearly established such that a reasonable prison official would have known that shackling Ms. Nelson’s legs to the bed during the birthing process violated the Eighth Amendment. See *Hope*, 536 U.S. at 739; *Saucier v. Katz*, 533 U.S. 194, 202 (2001). The Supreme Court’s decision in *Hope* had made clear that, absent an emergency situation or specific security threat, the practice of using restraints on a prisoner in a manner that subjects the prisoner to a substantial risk of physical injury or other harm constitutes cruel and unusual punishment in violation of the Eighth Amendment. See *Hope*, 536 U.S. at 738. And the court’s decision in *Women Prisoners of the District of Columbia Department of Corrections* had specifically addressed the practice of shackling pregnant prisoners and held it to be unconstitutional. See 877 F. Supp. at 699.

Moreover, at the time of Shawanna Nelson’s incarceration, it was clear that the practice of shackling a pregnant prisoner during the birthing process violated

⁷ Prison Service Orders are mandatory instructions that are intended to last for an indefinite period.

contemporary standards of decency. The practice was condemned both in the United States and abroad by groups ranging from the American Public Health Association to the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. *See supra* at 7, 13. It was expressly banned in England and several of Arkansas’s sister states, and was prohibited by two major international human rights treaties that the United States had ratified. *See supra* at 8-14.

CONCLUSION

For the reasons set forth above, this Court should affirm the judgment entered by the district court.

Respectfully submitted,

<p><u>/S/ Charles M. Kester</u> Charles M. Kester The Kester Law Firm P.O. Box. 184 Fayetteville, Arkansas 72702 (479) 582-4600</p>	<p><u>/S/ Stephanie Toti</u> Cynthia Soohoo Dana Sussman* Stephanie Toti CENTER FOR REPRODUCTIVE RIGHTS 120 Wall Street, 14th Floor New York, NY 10005 (917) 637-3600 *Bar Admission Pending</p>
--	---

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7), the attached Amicus Curiae Brief is proportionately spaced, has a type face of 14 point, contains 15 pages and 3,887 words inclusive of headings and footnotes but exclusive of the corporate disclosure statement, table of contents, table of authorities, description of *amici curiae*, certificate of compliance and certificate of service.

<p><u>/S/ Charles M. Kester</u> Charles M. Kester The Kester Law Firm P.O. Box. 184 Fayetteville, Arkansas 72702 (479) 582-4600</p>	<p><u>/S/ Stephanie Toti</u> Cynthia Soohoo Dana Sussman* Stephanie Toti CENTER FOR REPRODUCTIVE RIGHTS 120 Wall Street, 14th Floor New York, NY 10005 (917) 637-3600 *Bar Admission Pending</p>
--	---

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

Counsel hereby certifies that on September 13, 2008, a copy of this brief was delivered via the Court's CM/ECF system to:

Christine A. Boozer
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Attorney for Appellants

and

Cathleen v. Compton
Dudley & Compton
114 South Pulaski Street
Little Rock, Arkansas 77201
Attorney for Appellee

<p><u>/S/ Charles M. Kester</u> Charles M. Kester The Kester Law Firm P.O. Box. 184 Fayetteville, Arkansas 72702 (479) 582-4600</p>	<p><u>/S/ Stephanie Toti</u> Cynthia Soohoo Dana Sussman* Stephanie Toti CENTER FOR REPRODUCTIVE RIGHTS 120 Wall Street, 14th Floor New York, NY 10005 (917) 637-3600 *Bar Admission Pending</p>
--	---

Counsel for Amici Curiae