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

State of New York
Court of Appeals

In the Matter of

LUKAS B.,
A Child Under Eighteen Years of Age Alleged to Be 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.

MOTION BY CHILDREN'S RIGHTS, THE COLUMBIA LAW SCHOOL FAMILY DEFENSE CLINIC, THE BARTON CHILD LAW & POLICY CENTER, EMORY UNIVERSITY SCHOOL OF LAW, BLACK FAMILIES LOVE AND UNITE, BROOKLYN DEFENDER SERVICES, THE CHIEF DEFENDERS ASSOCIATION OF NEW YORK, COMMUNITY LEGAL SERVICES OF PHILADELPHIA, JUVENILE LAW CENTER, LAWYERS FOR CHILDREN, LEGAL SERVICES OF THE HUDSON VALLEY, MINING FOR GOLD, LLC, THE MJCF COALITION, THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, THE NATIONAL CENTER FOR YOUTH LAW, THE NEW YORK STATE DEFENDER'S ASSOCIATION, PARENTS SUPPORTING PARENTS NY, PROFESSOR DOROTHY ROBERTS, THE SAYRA & NEIL MEYERHOFF CENTER FOR FAMILIES, CHILDREN AND THE COURTS AT THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW, AND UNITED FAMILY ADVOCATES FOR LEAVE TO FILE AS *AMICI CURIAE*

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
Tel: (212) 683-2210
hnaveed@childrensrights.org

Josh Gupta-Kagan
Columbia Law School
Family Defense Clinic
434 West 116th Street
New York, New York 10027
Tel: (212) 853-4021
jgupta-kagan@law.columbia.edu

STATE OF NEW YORK
COURT OF APPEALS

In the matter of LUKAS B., A Child Under Eighteen Years of Age Alleged to be 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.*	First Department Appellate Division No. 2023-03054 New York County Family Court Docket No. NN-15499/18 **NOTICE OF MOTION FOR LEAVE TO FILE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT-APPELLANT**

PLEASE TAKE NOTICE that, upon the accompanying affirmation of Hina Naveed, dated March 4, 2025, and the exhibits annexed thereto, Children's Rights; the Columbia Law School Family Defense Clinic; the Barton Child Law & Policy Center, Emory University School of Law; Black Families Love and Unite; Brooklyn Defender Services; the Chief Defenders Association of New York; Community Legal Services of Philadelphia; Juvenile Law Center; Lawyers For Children; Legal Services of the Hudson Valley; Mining for Gold, LLC; the MJCF Coalition; the National Association of Counsel for Children; the National Center for Youth Law; the New York State Defender's Association; Parents Supporting Parents NY;

Professor Dorothy Roberts; the Sayra & Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law; and United Family Advocates will move this Court on March 17, 2025, or as soon thereafter as counsel may be heard, at Court of Appeals Hall, 20 Eagle Street, Albany, New York 12207, for an order pursuant to Rule 500.23 of the Rules of Practice of the Court of Appeals of the State of New York granting the Proposed *Amici Curiae* leave to file the Proposed Brief of *Amicus Curiae* in Support of Respondent-Appellant, attached hereto as **Exhibit A**, in the above-entitled proceeding, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 4, 2025

Respectfully submitted,

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
hnaveed@childrensrights.org
(212) 683-2210

To:

Chloe Moon, Esq.
NEW YORK CITY LAW DEPARTMENT APPEALS DIVISION
100 Church Street
New York, New York 10007

Attorney for Petitioner-Respondent

Susan Clement, Esq.
THE LEGAL AID SOCIETY JUVENILE RIGHTS PRACTICE
199 Water Street, 3rd Floor
New York, New York 10038

Attorney for Lukas B.

Eliza McDuffie, Esq.
FAMILY JUSTICE LAW CENTER
41 Madison Avenue, 40th Floor
New York, NY 10010

Attorney for Respondent-Appellant

STATE OF NEW YORK
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In the matter of LUKAS B., A Child Under Eighteen Years of Age Alleged to be 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.*	First Department Appellate Division No. 2023-03054 New York County Family Court Docket No. NN-15499/18 **AFFIRMATION OF HINA NAVEED IN SUPPORT OF MOTION FOR LEAVE TO FILE AS *AMICI CURIAE***

Hina Naveed, an attorney admitted to practice in the State of New York, affirms under penalty of perjury the following statements to be true:

1. I am an attorney at Children's Rights, counsel for proposed *Amici*. I submit this affirmation in support of a Motion by Children's Rights; the Columbia Law School Family Defense Clinic; the Barton Child Law & Policy Center, Emory University School of Law; Black Families Love and Unite; Brooklyn Defender Services; the Chief Defenders Association of New York; Community Legal Services of Philadelphia; Juvenile Law Center; Lawyers For Children; Legal Services of the Hudson Valley; Mining for Gold, LLC; the MJCF Coalition; the

National Association of Counsel for Children; the National Center for Youth Law; the New York State Defender's Association; Parents Supporting Parents NY; Professor Dorothy Roberts; the Sayra & Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law; and United Family Advocates for Leave to File as *Amici Curiae*, pursuant to 22 N.Y.C.R.R. § 500.23(a)(3), in support of the Respondent-Appellant's Motion for Leave to Appeal in the above-caption action.

2. Attached hereto as Exhibit A is a copy of the brief that the Proposed Amici Curiae wish to submit to the Court (the "Proposed Brief").

The Identity and Interest of the Proposed *Amici Curiae*

3. Proposed *Amici* are advocates for children and parents and have a strong interest in the implications of this appeal for the law governing Article 10 neglect proceedings.

4. Proposed *Amicus* Children's Rights is a national organization that investigates, exposes, and combats violations of the rights of children, including through strategic advocacy and legal action.

5. Proposed *Amicus* Columbia Law School Family Defense Clinic represents parents in family court child welfare proceedings, and administrative proceedings in which parents seek to clear their names from the State Central Registry.

6. Proposed *Amicus* Barton Child Law and Policy Center is a clinical program of Emory Law School dedicated to promoting and protecting the legal rights and interests of children involved with the juvenile court, child welfare, and youth justice systems. The Center achieves its reform objectives through research-based policy development, legislative advocacy, and holistic legal representation for individual clients. The Barton Center adopts a multidisciplinary, collaborative approach to achieving justice for youth through which children are viewed in their social and familial contexts and provided with individualized services to protect their legal rights, respond to their human needs, and ameliorate the social conditions that create risk of system involvement. The Barton Center has represented more than 500 youth and trained more than 1500 students since its founding in 2000.

7. Proposed *Amicus* Black Families Love and Unite is a collective of advocates and organizers who have been impacted by family policing and aims to dismantle punitive systems and build safe and sustainable communities through advocacy, participatory research, and movement building.

8. Proposed *Amicus* Brooklyn Defender Services' Family Defense Practice ("BDS") is the primary provider of legal representation to respondents in Article 10 cases in Brooklyn Family Court. BDS' interdisciplinary team advocates

to keep children out of foster care and safely reunify families as quickly as possible. BDS advances our clients' due process rights in court while helping them obtain the help they need out-of-court to keep their families together. The Family Defense Practice ("FDP") has been representing parents in Family Court for almost 28 years and represents over 2,500 clients per year in Article 10 and Early Defense cases.

9. Proposed *Amicus* the Chief Defenders Association of New York ("CDANY") is a membership organization of the appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. CDANY's organizations collectively represent the vast majority of people prosecuted in every county of New York State—hundreds of thousands of people each year. Collectively, public defense offices represent close to 400,000 individuals in the criminal, family, and appellate courts of New York every year.

10. Proposed *Amicus* Community Legal Services of Philadelphia provides free civil legal assistance to low-income people and advocates for policy changes that the community needs.

11. Proposed *Amicus* Juvenile Law Center is the country's first non-profit public interest law firm for children, and works in collaboration with youth and

families to fight for rights, dignity, equity, and opportunity for youth and to reduce the harms of child welfare and justice systems.

12. Proposed *Amicus* Lawyers For Children provides free legal and social work services for children in foster care, and engages in targeted public policy and class action advocacy to achieve system-wide changes in child welfare.

13. Proposed *Amicus* Legal Services of the Hudson Valley provides high quality counsel in civil matters for low-income individuals and families and other vulnerable persons who do not otherwise have access to legal representation.

14. Proposed *Amicus* Mining for Gold, LLC's mission is to communally nurture freedom dreams in the ongoing movement toward justice and liberation by establishing necessary relationships with those most impacted by federal and state policies and practices, while providing family serving agencies with antiracist and justice-centered leadership development, culture building, and liberatory guidance.

15. Proposed *Amicus* MJCF Coalition is a grassroots, antiracist organization for and by the people directly impacted by the family policing, or child welfare, system. The Coalition provides comprehensive services to children, parents, and kinship caregivers and aims to drive positive change through education, advocacy, and policy reform.

16. Founded in 1977, proposed *Amicus* the National Association of Counsel for Children ("NACC"), is a 501(c)(3) non-profit child advocacy and

professional membership association that advances children's and parent's rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. A multidisciplinary organization, its members primarily include child welfare attorneys and judges, as well as professionals from the fields of medicine, social work, mental health, and education. NACC's work includes federal and state level policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm, and an *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs promoting the legal interests of children in state and federal appellate courts, as well as the Supreme Court of the United States. More information about NACC can be found at www.naccchildlaw.org.

17. Proposed Amicus the National Center for Youth Law ("NCYL") is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. NCYL's priorities include ensuring that children and youth have the resources, support, and opportunities they need to live safely with their families in their communities and that public agencies promote their safety and well-being. NCYL represents youth

in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people in foster care.

18. Proposed *Amicus* New York State Defender's Association ("NYSDA"), is a not-for-profit membership association of more than 1,600 public defenders, legal aid attorneys, assigned counsel, public defense team members, and community members throughout the state. NYSDA's mission is to improve the quality of publicly supported legal representation to people who cannot afford counsel in New York's family and criminal courts.

19. Proposed *Amicus* Parents Supporting Parents NY ("PSPNY") is a grassroots community-based organization fighting to improve the quality of life for New York parents. PSPNY provides direct services and resources to families.

20. Proposed *Amicus* Dorothy E. Roberts, George A. Weiss University Professor of Law & Sociology and Raymond Pace & Sadie Tanner Mossell Alexander Professor of Civil Rights, University of Pennsylvania, is an expert on child welfare law and the author of two books and many scholarly articles on this topic.

21. Proposed *Amicus* the Sayra & Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law envisions communities where children and families thrive without unnecessary involvement in the legal system. The Center promotes child and family well-being while

inspiring the next generation of attorneys to prioritize the power, voice, and needs of families and engage communities as we work tirelessly to transform systems that create barriers to family well-being.

22. Proposed *Amicus* United Family Advocates ("UFA") is a bipartisan coalition of child and family advocates who seek policy solutions to create a more compassionate and just approach to child welfare that focuses on supporting rather than separating families. UFA brings together advocates from across the political spectrum who have divergent views on many issues, but are united by a commitment to a future in which children and families find safety and support from community investment rather than government intervention.

Non-Participation of Parties

23. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation.

24. No party or its counsel contributed money intended to fund preparation or submission of this brief.

25. No person or entity other than movants or their counsel contributed money intended to fund preparation or submission of this brief.

Basis for Amicus Curiae Relief

26. Pursuant to Rule 500.23(a)(4)(i) of the Rules of Practice of this Court, the Court should grant Proposed *Amici Curiae* permission to appear as amicus curiae

because *Amici* can identify law and arguments that might otherwise escape the Court's consideration, and, based on their extensive relevant experience, can assist the court by providing legally significant context for central legal issues presented in this matter.

27. Proposed Amici Curiae, as advocates for children and parents, are uniquely positioned to advise the Court on the implications of this case as they relate to the rights and welfare of the children and families facing neglect proceedings. The Proposed Brief details the legal basis for and applications of the right to family integrity that both children and parents enjoy, and identifies serious harms that could befall vulnerable children and families if this Court does not grant leave to appeal, and which might otherwise go unnoticed.

28. WHEREFORE, for the reasons set forth herein, the Proposed *Amici Curiae* respectfully request that the Court grant this Motion for Leave to File as *Amici Curiae*, and award such other and further relief as the Court may deem just and proper.

I 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.

Dated: New York, New York
March 4, 2025

Respectfully submitted,

Hina Naveed

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
hnaveed@childrensrights.org
(212) 683-2210

EXHIBIT A

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PROPOSED BRIEF IN SUPPORT OF RESPONDENT-APPELLANT AS *AMICI CURIAE*

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
Tel: (212) 683-2210
hnaveed@childrensrights.org

Josh Gupta-Kagan
Columbia Law School
Family Defense Clinic
434 West 116th Street
New York, New York 10027
Tel: (212) 853-4021
jgupta-kagan@law.columbia.edu

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PRELIMINARY STATEMENT

Appellant in this case asks the Court of Appeals to grant leave to appeal and examine and resolve a question of grave importance: whether the state can find that a father neglected his child—laying the groundwork for separating the father and child—solely because the father did not successfully control his partner's drug use during her pregnancy. Lower New York courts have imposed and upheld such adjudications on many occasions, but this Court has never addressed the issue.

Tearing families apart unnecessarily violates the fundamental constitutional rights of both parents and children to be together. A substantial body of research has repeatedly demonstrated that such forced separations inflict severe trauma and lead to elevated risks of myriad negative outcomes for the very children the state claims to protect. The ruling below and other similar Family Court and Appellate Division rulings build needless separation into the statutory scheme. And they go even further, establishing a perverse set of incentives for prospective fathers to distance themselves from their pregnant partners—a circumstance proven to severely damage maternal and fetal health.[1]

[1] This amicus brief addresses the right to family integrity and the harms inflicted on parents and children when this right is not upheld. Amici endorse appellant's arguments regarding statutory construction, vagueness, and the rights of pregnant people to bodily autonomy, physical liberty, privacy, and equal protection, but do not address those issues here.

Amici, advocates for children and parents, urge this Court to grant review, correct the error below and safeguard the rights and well-being of families and children.

FACTS

Amici adopt the Appellant's Statement of Facts.

ARGUMENT

The ruling below lacks support in the New York Family Court Act and raises profound questions of constitutional law. The statute defines a "neglected child" as a child "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 . . . to exercise a minimum degree of care," including by failing to provide for the child's needs or "by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof." N.Y. Fam. Ct. Act § 1012. The statute provides that such neglect can consist of the parent's drug use, but, notably, the statute does not mention a co-parent or partner's drug use as a potential basis for a neglect finding. *Id.* at § 1012(f)(i)(B). Nevertheless, the Appellate Division has interpreted the statute to allow for a neglect finding against a prospective father solely because he did not effectively prevent his pregnant partner's drug use.

The First Department decision and the line of precedent on which it rests demand the Court of Appeals' review because they incorrectly interpret the statute

to violate family integrity, contravene the Family Court Act's purpose, and impose irreparable harm on parents and children. This Court has never considered the fact pattern at issue: a father is found to be neglectful not due to any direct action or inaction toward the child after birth, but merely because he is aware of his pregnant partner's struggles with substance use and is either unable to successfully help her stop using substances or unwilling to coerce her to do so. The Legislature has not explicitly addressed this fact pattern; while Family Court Act § 1012(f) defines some specific categories of neglect (for instance, physical neglect, excessive corporal punishment, or neglect resulting from one parent's substance use), no provision defines neglect as a prospective father's inability to control his pregnant partner's drug use. *See id.* at § 1012(f)(i)(A)-(B). Adjudication of this fact pattern, therefore, depends entirely on judge-made law interpreting § 1012(f) to encompass it.

Lower courts have never explained or justified this judge-made law in any detail. In finding Mr. B. neglectful, the First Department did not address the many profound questions of state statutory and state and federal constitutional law raised in this matter, and instead recited the holding from an earlier case: "the father '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.'" *Matter of L.B.*, 226 A.D.3d 554 (1st Dep't

2024) (quoting *Matter of Ja'Vaughn Kiaymonie S. (Nathaniel S.)*, 146 A.D.3d 422 (1st Dep't 2017)). That case, in turn, had simply cited two earlier cases, *Matter of Ashanti M.*, 19 A.D.3d 249 (1st Dep't 2005), and *Matter of Niviya K.*, 89 A.D.3d 1027 (2d Dep't 2011). Those and other cases are similarly devoid of any guiding analysis on the issue. *Matter of Leo RR.*, 213 A.D.3d 1190 (3d Dep't 2023); *Matter of Camden J. (William J.)*, 167 A.D.3d 1346 (3d Dep't 2018); *Matter of Thamel J.*, 162 A.D.3d 507 (1st Dep't 2018); *Matter of Jamoori L. (Danette B.)*, 116 A.D.3d 1046 (2d Dep't 2014); *Matter of Orlando R.*, 112 A.D.3d 525 (1st Dep't 2013); *Matter of Stevie R. (Arvin R.)*, 97 A.D.3d 906 (3d Dep't 2012); *Matter of Kierra C.*, 101 A.D.3d 993 (2d Dep't 2012); *Matter of Carlena B.*, 61 A.D.3d 752 (2d Dep't 2009); *Matter of Cantina B.*, 26 A.D.3d 327 (2d Dep't 2006); *Matter of Kanika M.*, 270 A.D.2d 490 (2d Dep't 2000); *Matter of K. Children*, 253 A.D.2d 764 (2d Dep't 1998); *Matter of R.W. Children*, 240 A.D.2d 207 (1st Dep't 1997).

Unless this Court steps in to consider and reverse this disturbing precedent, lower courts will continue to apply these holdings by rote, unlawfully jeopardizing fathers' constitutionally protected right to the care and custody of their children. Given the lack of any reasoned analysis by lower courts to substantiate the holdings of this line of cases and the serious constitutional questions at stake, this Court should grant leave to appeal.

The Appellate Division's expansion of the definition of "neglect" is difficult to justify based on the plain unambiguous text of § 1012. But even if the statute were ambiguous, the canon of constitutional avoidance requires an interpretation that avoids injustice, hardship, or constitutional doubts. *People v. Correa*, 15 N.Y.3d 213, 232 (2010) (quoting *Matter of Jacob*, 86 N.Y.2d 651, 667 (1995)). Here, the Appellate Division's interpretation of § 1012 violates the constitutionally protected rights of parents and children and subjects them to a heightened risk of unnecessary family separation—a devastating form of state intervention that disproportionately falls on families of color and families experiencing poverty. This Court should correct this error and interpret § 1012 in a manner that is both constitutional and just.

I. Interpreting Article 10 to permit a neglect finding against a father for not stopping his pregnant partner from using drugs violates the constitutional rights of both fathers and children.

A. Both fathers and children have a fundamental right to family integrity.

The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution protects "the right of the family to remain together without the coercive interference of the awesome power of the state." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977). A parent's interest in the care and custody of his child "is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court]." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). And "[t]his right to

the preservation of family integrity encompasses the reciprocal rights of both parent and children," specifically the parent's right to "companionship, care, custody and management of his or her children" and the child's right "in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association,' with the parent." *Duchesne*, 566 F.2d at 825 (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) and *Smith v. Org. of Foster Families For Equal. and Reform*, 431 U.S. 816, 844 (1977)).

The New York Constitution provides even higher levels of protection than the already robust protections provided by the federal Constitution, particularly regarding the right to family integrity. This Court has held that parents are constitutionally entitled to counsel in Article 10 proceedings while the U.S. Supreme Court has declined to find such a right in the federal Constitution. *Compare Matter of Ella B.*, 30 N.Y.2d 352, 356 (1972) ("A parent's concern for the liberty of the child, as well as for his care and control, involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer.") with *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18 (1981) (finding no federal constitutional right to counsel in a termination of parental rights proceeding).

In this context, this Court has recognized that parents' rights to the care and custody of their children, and children's right to a family life with their parents "are among our oldest and most fundamental and are not only provided by statute, but also guaranteed to parents and children by our State and Federal Constitutions." *Matter of Jamie J. (Michelle E.C.)*, 30 N.Y.3d 275, 280 (2017) (citing *Matter of Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1, 26 (2016); *Matter of Marie B.*, 62 N.Y.2d 352, 358-359 (1984); *Matter of Bennett v. Jeffreys*, 40 N.Y.2d 543, 546 (1976)); *see also Matter of Tammie Z.*, 66 N.Y.2d 1, 4 (1985) ("Without doubt '[a] parent's concern for the liberty of the child, as well as for his care and control' is a 'fundamental interest and right', and due process must be afforded in article 10 proceedings." (alteration in original) (quoting *Matter of Ella B.*, 30 N.Y.2d at 356)).

B. Adjudications of neglect on the basis of imputed harm alone violate the right to family integrity.

The Fourteenth Amendment's Due Process Clause provides heightened protection against government interference with fundamental liberty interests, including those related to family integrity. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). A state may not deprive an individual of such a fundamental liberty unless "the deprivation is narrowly tailored to serve a compelling government interest." *United States v. Myers*, 426 F.3d 117, 126 (2d Cir. 2005)

(applying this principle to a supervised release condition that required a father to obtain advance authorization before spending time alone with his child).

Given the protections afforded by the Due Process Clause, this Court has cautioned that a showing of "persisting neglect" is one of the very few "constitutionally permissible" reasons to separate parent and child. *Matter of Jamie J. (Michelle E.C.)*, 30 N.Y.3d at 286-87 (quoting *Matter of Marie B.*, 62 N.Y.2d at 358). If an underlying neglect petition is dismissed, the Family Court has no further power to order such separation. *Id.* at 287. Perhaps mindful of the close connection between findings of neglect and family separation, "[t]he drafters of article 10 were 'deeply concerned' that an imprecise definition of child neglect might result in 'unwarranted state intervention into private family life.'" *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 368 (2004) (quoting Besharov, Practice Commentaries, McKinney's Cons Laws of NY, Book 29A, Fam. Ct. Act § 1012, at 320 [1999 ed]). Letting stand an interpretation of § 1012 that stretches the statute to permit a finding of neglect whenever a prospective father is unable to control his partner's activities during her pregnancy allows for just such "unwarranted state intervention into private family life."

In this case, the Appellate Division upheld a finding that Mr. B was neglectful toward his future child, opening the door to their permanent separation after the child's birth, simply because Mr. B's efforts to help his pregnant partner

obtain treatment for her drug use were at least partly unsuccessful. But allowing this neglect finding necessitates a highly imprecise view of the statute, since the fact of his partner's drug use provides little insight into Mr. B's ability to provide safe care to his child.

Indeed, this Court has held that a newborn's positive toxicology report, by itself, is not enough to sustain a finding of neglect even against the birthing parent. *Matter of Nassau Cnty. Dep't. of Soc. Servs. v. Denise J.*, 87 N.Y.2d 73, 79 (1995). This is because the mere fact of the child's exposure to drugs "fails to make the necessary causative connection." *Id.* More evidence is needed to conclude that a parent has been neglectful. In *Denise J.*, this Court affirmed a neglect adjudication only because of evidence that the mother "had a history of being unable to care for her children because of her drug use" and had recently been high on drugs. *Id.* To sustain a finding of neglect against a prospective father based solely on his partner's drug use—without evidence regarding his own caretaking abilities—is an unconstitutional expansion of the statute.

This Court also emphasized the importance of an individual analysis of a parent's caretaking ability in *Nicholson v. Scoppetta*, 3 N.Y.3d at 367-72. In that case, the Court held that a neglect finding cannot be sustained solely because one parent allowed the child to witness domestic abuse by the other. Instead, a neglect determination requires a case-specific inquiry into the particular circumstances the

non-abusing parent faced, including the resources and options reasonably available to that parent. *Id.* at 371. If one parent allowing a child to view another parent's domestic abuse is not enough to sustain neglect, then a neglect finding against one parent based solely on the other parent's drug use cannot stand. In accordance with *Nicholson*, this Court should read the Family Court Act to require an examination of what the respondent parent could have reasonably done to ameliorate the situation.[2] With this framework in mind, as Appellant argues in his Motion for Leave to Appeal, it is impossible for a non-pregnant prospective parent to ensure that the fetus is not exposed to drugs during pregnancy, as many of the actions he might take in an attempt to prevent such drug exposure are illegal, actively harmful, or both. Mot. for Leave to Appeal at 18-21.

Evidence that a prospective father did not prevent his partner from using drugs cannot, on its own, justify stripping both father and child of their constitutionally protected interest in the integrity of their family bonds.

II. The Appellate Division's misinterpretation of Article 10 is contrary to the statute's purpose and state policy to benefit children and families.

[2] It is amici's position that there are no reasonable steps a prospective father can take to ensure that a fetus is not exposed to drugs, and therefore that a neglect finding can never be justified solely based on the prospective father's failure to take such steps. Even if this Court disagrees, however, there is evidence in the present case that Mr. B did take steps to help his partner to obtain treatment and that these steps were reasonable under the circumstances.

This Court has repeatedly acknowledged that, in drafting Article 10, "the Legislature sought to strike a balance between protecting children through 'state intervention' while simultaneously shielding 'private family life' from such intervention when it is 'unwarranted.'" *Matter of Sapphire W.*, 2025 N.Y. Slip Op. 00662, at 9, (2d Dep't 2025) (quoting *Matter of Jamie J. (Michelle E.C.)*, 30 N.Y.3d at 284). In general, New York statutes "impose[] an unequivocal duty on child welfare officials to preserve family integrity." *Martin A. v. Gross*, 153 A.D.2d 812, 814 (1st Dep't 1989). New York's Social Services Law requires that social service officials provide resources to ensure that "as far as possible families shall be kept together." N.Y. Soc. Serv. Law § 131(3). The Legislature has further recognized that "the child's need for a normal family life will usually best be met in the home of its birth parent" and that "the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home." *Id.* at § 384b(1)(a)(i)-(iii). The Second Circuit has noted that "the self-proclaimed policy of the New York foster care system is to" reunite children with their families as early as possible and to reduce the likelihood of reentry into foster care. *Joyner by Lowry v. Dumpson*, 712 F.2d 770, 780 (2d Cir. 1983).

In short, the state of New York, and the Legislature that passed Article 10, have a strong interest in keeping families together. This interest is undermined by the overbroad reading of Article 10 adopted by the Appellate Division in this case.

A. Family separation severely harms children.

This Court has recognized that forcibly breaking family bonds seriously harms children and "in many instances removal may do more harm to the child than good." *Nicholson*, 3 N.Y.3d at 375. Indeed, this Court has referred to removal as a "trauma" that the law narrowly circumscribes. *Id.* The Second Circuit has also acknowledged the "evidence that removing children from their parent is [] a significant source of stress and emotional trauma, especially for young children." *Nicholson v. Scoppetta*, 344 F.3d 154, 174 (2d Cir. 2003). In interpreting the Family Court Act in light of the legislature's express goal of protecting children—to safeguard children's "physical, mental, and emotional well-being" N.Y. Fam. Ct. Act § 1011—this Court should consider the overwhelming evidence that unnecessary family separation is extremely harmful to the very children the state aims to protect.

1. The trauma of removal from parents, extended families, and communities, as well as the realities of the foster system itself, lead to worse outcomes for youth pulled into this system.

a. The harm of removal

Family separation in the child welfare system inflicts profound psychological and emotional harm on children. Abrupt removal from parents and familiar surroundings inflicts what experts describe as "toxic stress," often leading to long-term mental health challenges such as post-traumatic stress disorder

(PTSD), anxiety, and depression. *Toxic Stress*, Harv. Univ. Ctr. on the Developing Child, https://developingchild.harvard.edu/key-concept/toxic-stress/ (last visited Mar. 4, 2025) ("[R]esearch has demonstrated that supportive, responsive relationships with caring adults as early in life as possible can help prevent or reverse the damaging effects of toxic stress response."); Laura Santhanam, *How the Toxic Stress of Family Separation Can Harm a Child*, PBS (June 28, 2018, 5:46 PM), https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child; Colleen Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border,* Am. Acad. of Pediatrics (May 8, 2018), https://docs.house.gov/meetings/IF/IF14/20180627/108510/HMKP-115-IF14-20180627-SD011.pdf; Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 Child. 390 (2014).

b. The harms caused by the foster system

Children in the foster system often grow up deprived of high-quality or consistent education, access to developmentally appropriate healthcare services, and disconnected from their families, their traditions, and culture. They can be placed in the homes of people they don't know, frequently moved from one place to the next, or warehoused in congregate facilities. *Is Child Welfare an Accurate Name for a System That Hurts Kids?*, Child.'s. Rts. (July 7, 2023), https://www.childrensrights.org/news-voices/is-child-welfare-an-accurate-name-for-a-system-

that-hurts-kids. Even when children live in a family setting, over 1/3 of kids change placements at least three times a year. *Id.* Frequent placement changes (or "placement disruptions"), undermine their emotional attachments and can cause developmental delays, attachment disorders, and ongoing trauma. Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children who Spend Less than Thirty Days in Foster Care*, 19 U. Pa. J.L. & Soc. Change 207, 237 (2017). These children face a markedly higher risk of arrest; experience poor cognitive developmental, education, and employment outcomes, and have a higher likelihood of experiencing mental health conditions and substance use disorders.[3]

c. Negative long-term outcomes

Youth aging out of the child welfare system disproportionately experience homelessness, incarceration, unemployment, and lack of healthcare, imposing billions in societal costs alongside severe personal losses.[4] *Future Savings: The*

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[3] For data on these risks, *see* Laura Bauer & Judy L. Thomas, *Throwaway Kids: Star investigation reveals stark outcomes for America's foster care children*, Kan. City Star (Dec. 15, 2019), https://fostersuccess.org/wp-content/uploads/2021/09/Complete-Foster-Care.pdf (risk of arrests); Sarah Font & Marina Haddock Potter, *Socioeconomic Resource Environments in Biological and Alternative Family Care and Children's Cognitive Performance*, 89 Socio Inquiry 263 (2019) (cognitive development); Chantal Hinds, *A Feature, not a Bug: The Foster System's History of Othering*," Next 100 (Jan. 6, 2022), https://thenext100.org/a-feature-not-a-bug-the-foster-systems-history-of-othering/ (education); *Fostering Youth Transitions: Using Data to Drive Policy and Practice Decisions*, Annie E. Casey Found. (Nov. 13, 2018), https://www.aecf.org/resources/fostering-youth-transitions (employment); Daniel J. Pilowsky & Li-Tzy Wu, *Psychiatric symptoms and substance use disorders in a nationally representative sample of American adolescents involved with foster care*, 38(4) J. of Adolescent Health 351 (2006) (mental health conditions).

[4] For data on these risks, *see From Foster Home to Homeless: Strategies to Prevent Homelessness for Youth Transitioning from Foster Care*, Annie E. Casey Found. (June 14,

Economic Potential of Successful Transitions from Foster Care to Adulthood, Annie E. Casey Found. (Jan. 30, 2019), https://assets.aecf.org/m/resourcedoc/aecf-futuresavings-2019.pdf. These outcomes persist despite child welfare interventions' stated goal to protect children; instead, these removals frequently create more harms than those they purport to prevent.

d. Harm to parents

Parents, too, endure severe distress. When they lose custody of their children—often under circumstances rooted in poverty or unmet service needs—parents often develop depression, anxiety, and other mental health issues. Vivek S. Sankaran et al., *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, 102 Marq. L. Rev. 1163, 1169-1170 (2019). This family disruption reverberates across generations: parents who were themselves removed as children are disproportionately likely to have their own children experience child welfare interventions. Such repeated separations become intergenerational, entrenching trauma and deepening the social and economic challenges already confronting low-income and marginalized families. Sarah Font et al., *Patterns of intergenerational child protective services involvement*, 99 Child

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2014), https://assets.aecf.org/m/resourcedoc/JCYOI-FromFosterHometoHomeless-2014.pdf (homelessness); Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, Chapin Hall at the Univ. of Chicago (2011), https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf (healthcare).

Abuse & Neglect 1, 3 (2020); Jane Marie Marshall et al., *Intergenerational families in child welfare: Assessing needs and estimating permanency*, 33(6) Child. and Youth Servs. Rev. 1024 (2011).

Instead of tearing families apart, the state should seek to preserve them. Extensive social science literature finds that children's educational, emotional, and social outcomes improve when families receive services and are kept intact whenever safely possible. Susan L. Brooks & Ya'ir Ronen, *The Notion of Interdependence and Its Implications for Child and Family Policy*, 17 J. of Feminist Fam Therapy 23, 33 (2008).

2. Harm of removal falls disproportionately on children and families of color and those experiencing poverty.

New York courts have begun to recognize chronic disparities regarding which children the child welfare system subjects to the harm of removal: "Considering the intrusive and potentially traumatic impact of ACS involvement in a family's life, the disproportionate involvement of Black and Hispanic children in the child welfare system cannot be ignored." *Matter of Sapphire W.*, 2025 N.Y. Slip Op. 00662 at 9. Indeed, the child welfare system's disparate impact on Black and Brown communities is intertwined with broader systemic inequalities, such as income and wealth disparities, housing discrimination, and limited access to comprehensive safety nets. Liz Mineo, *Racial Wealth Gap May Be a Key to Other*

Inequities, The Harv. Gazette (June 3, 2021), https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/; Bradley L. Hardy et al., *The Historical Role of Race and Policy for Regional Inequality*, The Hamilton Project (Sept. 28, 2018), https://www.hamiltonproject.org/assets/files/PBP_HardyLoganParman_1009.pdf. Nationally, Black families make up a disproportionately high percentage of those investigated by child welfare services—over 50% of Black children are investigated at some point, compared to 28% of white children.[5] Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children*, 107 Am. J. Pub. Health 274, 277 (2017). Nearly 20% of Black children will have a substantiated maltreatment case (versus 10% of white children), and once those cases are substantiated, Black children are 15% more likely to be placed out-of-home. Youngmin Yi et al., *Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for U.S. Children by Race/Ethnicity*, 2011-2016, 110 Am. J. Pub. Health 704, 707 (2020); Kathryn Maguire-Jack et al., *Child Protective Services Decision-Making: The Role of Children's Race and County Factors*, 90 Am. J. Orthopsychiatry 48, 55 (2020). By age eighteen, over 9% of Black children in the United States have experienced foster care placement, double the rate for white children. Elisa Minoff

[5] These disparities persist, with some variation, across local jurisdictions. Frank Edwards et al., *Contact with Child Protective Services is Pervasive but Unequally Distributed by Race and Ethnicity in Large U.S. Counties*, 118 Proc. Nat'l Acad. Scis. 1 (2021).

& Alexandra Citrin, *Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect*, Ctr. For the Study of Soc. Pol'y (Mar. 2022), at 5, https://cssp.org/wp-content/uploads/2022/03/Systemically-Neglected-How-Racism-Structures-Public-Systems-to-Produce-Child-Neglect.pdf.

In New York, Black children are 2.04 times more likely to be subjected to an investigation, 2.50 times more likely to have a maltreatment allegation substantiated, 3.50 times more likely to be placed in the foster system, and 2.00 times more likely to have the rights of their parents terminated, when compared to white children. Youngmin Yi et al., *State-Level Variation in the Cumulative Prevalence of Child Welfare System Contact, 2015-2019*, 147 Child. and Youth Servs. Rev. 1, 10-13 (2023) (analysis by Children's Rights' Advocacy & Policy Department).

Racial disparities persist after removal as well. Black children remain in the foster system longer, are moved more frequently between placements, receive inferior services, and are four times less likely to be reunified with their families. Kathryn Maguire-Jack et al., *Child Protective Services Decision-Making: The Role of Children's Race and County Factors*, 90 Am. J. Orthopsychiatry 48, 55 (2020); Adoption & Foster Care Analysis & Reporting System 2021 Data Set (analysis by Children's Rights' Advocacy & Policy Department); Dorothy E. Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families—And How*

Abolition can Build a Safer World 288 (2022); *Shifting the Perceptions and Treatment of Black, Native, and Latinx Youth Involved in Systems of Care*, Linking Sys. of Care for Child. & Youth Project, Ctr. for the Study of Soc. Pol'y, Nat'l Council of Juvenile & Fam. Ct. Judges (Jan. 2022), at 10, https://cssp.org/wpcontent/uploads/2022/01/Shifting-the-Perception-of-Black-Latinx-Native-Youth-in-Systems-of-Care.pdf; Robert B. Hill, Synthesis of Research on Disproportionality in Child Welfare: An Update, Casey-CSSP All. for Racial Equity in the Child Welfare Sys. (Oct. 2006), at 24, https://www.issuelab.org/resources/11355/11355.pdf. Black youth aging out of the child welfare system face notably worse outcomes: 23% experience homelessness, while 29% are incarcerated. National Youth in Transition Database Outcomes 2020 Cohort Wave 1 (analysis by Children's Rights' Advocacy & Policy Department).

3. To the extent that state action is needed, voluntary community-based services are much more likely to help children and families than findings of neglect.

The punitive measure of a neglect adjudication, potentially leading to removal, is not only harmful; it is often unnecessary. Evidence shows that the severe harms stemming from punitive child welfare involvement can be prevented through non-invasive community resources and programming.

The United States Children's Bureau has recognized the value of community-based, non-intrusive programming and urges state child welfare

systems to use these types of resources whenever safe. *ACYF-CB-IM-18-05, Information Memorandum on Child Welfare*, Child.'s Bureau, Admin. for Child. & Fams, U.S. Dep't of Health & Hum. Servs. (Nov. 16, 2018), https://www.acf.hhs.gov/sites/default/files/documents/cb/im1805.pdf. In its endorsement, the Children's Bureau focused on the ability of these programs to prevent family separation and child maltreatment, thus reducing the harm and trauma to children and their families. *Id.* at 1. The Children's Bureau has commended many community programs for their success and recommended other counties and agencies implement the same. *See generally id.*

Given the evidence that community-based services can often keep families together safely, these services should be the first tool the state employs outside of true emergencies. The fact that a prospective father did not successfully control his partner's drug use, by itself, cannot possibly be enough to show that supportive, community-based services would not effectively enable him to provide a safe environment for his child. In light of the strong constitutional protections for family integrity, these types of services should be attempted before the state takes the punitive and devastating step of a neglect adjudication.

B. The Appellate Division's interpretation establishes perverse incentives for prospective fathers, harming children and families.

Fathers—particularly Black and Brown fathers—have historically been sidelined or ignored in child welfare proceedings. Despite substantial research showing that children with involved fathers benefit from stronger emotional regulation, higher academic achievement, and improved social development, many child welfare agencies fail to engage fathers as meaningful caregivers. Michael W. Yogman & Amelia M. Eppel, (2022). *The Role of Fathers in Child and Family Health*, *in* Engaged Fatherhood for Men, Families and Gender Equality Healthcare, Social Policy, and Work 15 (2021); *Why should child protection agencies engage and involve all fathers?,* Casey Fam. Programs (Jan. 3. 2024), https://www.casey.org/father-engagement-strategies/#. Fathers are frequently left out of case planning, even when ready and able to assume custody or play an active parental role. *Id.* Black and Latinx fathers, already burdened by stereotypes around absenteeism, are disproportionately harmed by these policies and practices, further entrenching racial disparities within the child welfare system. Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law,* 34 B.C.J.L. & Soc. Just. 233 (2014); Arroyo, Julia et al., *Ain't nobody got time for dad? Racial-ethnic disproportionalities in child welfare casework practice with nonresident fathers*, 93 Child Abuse & Neglect 182 (2019). The Appellate Division's interpretation of § 1012 greatly exacerbates these problems by creating incentives that push prospective fathers away from their partners and children.

1. The lower court's decision punishes prospective fathers for their involvement during pregnancy.

Prospective fathers should be able to be involved during a pregnancy without being legally required to infringe on their partners' bodily autonomy or fear that their involvement will lead to a charge of neglect. The lower court's decision punished Mr. B because of his involvement during the mother's pregnancy, despite Mr. B's efforts to support Ms. W. in her attempts to become sober. During Ms. W's pregnancy, Mr. B helped her enroll in an in-patient drug treatment program, ensured she was accepted into the program and arrived on time, and visited and communicated with her during the program. *See* Mot. for Leave to Appeal at 7-8. Further, when Ms. W was struggling, Mr. B "took her to eat" and paid for her groceries.[6] *Id.* Despite this evidence of support, the First Department focused solely on the fact that Mr. B was aware that Ms. W was using heroin before and during the pregnancy, and failed to stop it. *Matter of L.B.*, 226 A.D.3d 554 (1st Dep't 2024).

Had Mr. B not been involved and not provided support, he would have been under no burden to take steps to prevent Ms. W's drug use. Instead, the lower court's decision—and similar precedents—punishes prospective fathers for their

[6] It is amici's position that a neglect finding against Mr. B would be inappropriate even had he not made these efforts, for the reasons discussed above.

involvement during a pregnancy and thus disincentives fathers from becoming involved during the crucial prenatal stage of development.

Courts use a prospective father's level of involvement as a barometer for whether he knew or should have known of the mother's drug use. Thus, under the line of precedents at issue in this case, the more a father is involved with and supportive of his pregnant partner, the more likely it is that a family court will later deem him neglectful and take his baby from him, incentivizing prospective fathers to *disengage* from supporting their pregnant partners. The line of precedent on which the First Department relied (and similar precedents in other Appellate Departments) involves cases in which the fathers' involvement and decision to live with their pregnant partners were dispositive in the findings of neglect. The Third Department held that "[g]iven that he lived with the mother during her pregnancy, we find ample support for Family Court's conclusion that he knew or should have known about her drug use during the pregnancy." *Matter of Stevie R. (Arvin R.)*, 97 A.D.3d at 907-08. Similarly, in *Matter of Camden J. (William J.)* the Third Department noted that "[d]uring the relevant period, the father continued to reside with the mother, who continued to abuse drugs," thus justifying the neglect finding and removal of the baby once born. *Matter of Camden J. (William J.)*, 167 A.D.3d 1346 at 1350.

Furthermore, these lines of cases expressly punish prospective fathers for their attempts to help pregnant women struggling with drug addiction. *Matter of Orlando R.* involved a "homeless and unemployed" prospective father and pregnant mother. *Matter of Orlando R.*, 112 A.D.3d at 525. When the mother was pregnant, the father found the mother housing with a friend as a "last resort" so she would not be homeless. *Id.* But this effort to assist became grounds for a neglect finding against him after the woman relapsed, as the court held the father accountable for "the environment [that] apparently contributed to her relapse during her pregnancy." *Id.*

In contrast, when fathers opt to stop being involved or cease providing support to a pregnant partner, lower courts have shielded them from findings of neglect. Consider *Matter of Leo RR.*, 213 A.D.3d 1190 (3d Dep't 2023). A pregnant woman was under CPS investigation and probation supervision for using methamphetamine and heroin. *Id.* at 1190. The prospective father had made efforts to intervene, including enrolling the mother in a drug treatment facility and attending sessions with her. *Id.* at 1192. The mother signed herself out of the treatment facility after four days, and the prospective father then cut himself off from his pregnant partner. The Third Department endorsed his actions. On the basis that the father "had no contact with her for the remainder of the pregnancy," the Third Department dismissed a neglect petition against the father.

Id. at 1193 n.4. The court concluded that the father's failure to report the mother's drug use to her probation officer did not constitute neglect because the father "seemingly lacked any information to assist probation in locating her." *Id.* at 1193. Had the father continued to involve himself and provide support to the mother after she left the treatment facility, there likely would have been a finding of neglect against him.

In short, the lower court's precedents punish prospective fathers for cohabitating with and supporting their pregnant partners, while simultaneously shielding absent fathers from neglect findings. This creates a perverse incentive: if a father lives with or supports his pregnant partner, he risks being labeled neglectful; if he disengages, he avoids such a finding—even if that disengagement deprives the mother of essential support.

2. By incentivizing prospective fathers to disengage and depriving pregnant women of support from their partners, the lower court holding harms maternal health and increases risks to newborns.

In putting prospective fathers in this predicament, the First Department's holding thwarts the goals of the Family Court Act. In the words of the statute, Article 10 is "designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-

being." N.Y. Fam. Ct. Act § 1011. The First Department's holding does the opposite.

To align with the goals of the Family Court Act, the law should generally *encourage* paternal involvement with pregnant partners. Social science and medical research suggest fathers should be accessible and engaged to improve maternal and infant outcomes. Empirical "studies all point to the importance of increasing expectant father's involvement during pregnancy in order to improve pregnancy outcomes, and prevent infant morbidity and mortality." Amina P. Alio et al., *Addressing Policy Barriers to Paternal Involvement During Pregnancy*, 15 Maternal & Child Health J. 425, 426 (2011). Emotional support during pregnancy decreases the odds of preterm birth among mothers when compared to mothers who lack support. *Id.; see also* Susie Hoffman & Maureen C. Hatch, *Stress, Social Support and Pregnancy Outcome: A Reassessment Based on Recent Research*, 10 Paediatric & Perinatal Epidemiology 380, 394, 396 (1996) (summarizing the literature and concluding that intimate social support "particularly partner support" has "main effects" on fetal growth and leads to "improved fetal growth"). Further, women whose partners were involved in their pregnancy were 1.5 times more likely to receive prenatal care in the first trimester. Laurie T Martin et al., *The Effects of Father Involvement During Pregnancy on Receipt of Prenatal Care and Maternal Smoking*, 11 Maternal & Child Health J. 595, 597, 599 (2007). Fathers'

involvement during pregnancy also fosters social connections for mothers and reduces their risks of chronic stress and depression. John Cairney et al., *Stress, Social Support and Depression in Single and Married Mothers*, 38 Soc. Psychiatry & Psychiatric Epidemiology 442, 442 (2003).

Encouraging prospective fathers' involvement with partners is a crucial step to reducing pregnant women's drug use. Prospective fathers' involvement and support also reduce the chance that pregnant women will smoke cigarettes or use drugs—women whose partners were involved during pregnancy reduced their cigarette consumption 36% more than women whose partners were not involved in the pregnancy. Laurie T. Martin et al., *The Effects of Father Involvement During Pregnancy on Receipt of Prenatal Care and Maternal Smoking*, at 597, 599. The decrease in cigarette consumption is even greater when the couple is cohabitating. *Id.* Prospective father involvement also decreases the chances that a pregnant woman will use drugs and alcohol. Julien Teitler, *Father Involvement, Child Health and Maternal Health Behavior*, 23 Child. and Youth Servs. Rev. 403, 416 (2001). Perversely, then, the statutory interpretation that punishes prospective fathers for failing to stop their partners' drug use might actually increase rather than decrease the likelihood that those partners use drugs during pregnancy.

Conversely, a precedent that incentivizes prospective fathers to assert control over pregnant women encourages unhealthy relational dynamics and risks

damaging the relationship between the parents, ultimately leading to less engagement by the father during the pregnancy, which may last well into childhood. "[T]he relationship with the pregnant woman is a fundamental determinant of how present and engaged fathers can be even when they are responsible and seek to be involved." Derek M. Griffith et al., *Fathers' Perspectives on Fatherhood and Paternal Involvement During Pregnancy and Childbirth*, 50 Health Educ. & Behav. 802, 808 (2023). The "relational factors between parents" are crucial for maximizing the benefits of prospective fathers' pre-natal involvement. Amina P. Alio et al., *A Community Perspective on the Role of Fathers During Pregnancy: A Qualitative Study*, 13 BMC Pregnancy & Childbirth 60 (2013).

The Joint Center for Political and Economic Studies' Commission on Paternal Involvement in Pregnancy Outcomes (CPIPO), funded by the U.S. Department of Health and Human Services (HHS), published a set of recommendations to improve pregnancy outcomes and address policy barriers to improved maternal, paternal and newborn health. *See Commission Outlook: Best Practices for Improving Research, Policy, and Practice on Paternal Involvement in Pregnancy Outcomes*, Joint Ctr. for Pol. & Econ. Stud. (Apr. 30, 2010), https://jointcenter.org/commission-on-paternal-involvement-in-pregnancy-outcomes-cpipo-presents-best-and-promising-practices-for-improving-research-

policy-and-practice-on-paternal-involvement-in-pregnancy-outcomes/. The Commission concludes: "It is essential to provide fathers with the necessary tools to improve their involvement not only during pregnancy, but before, between, and beyond pregnancies." *Id.* at 3. Noting that the perinatal period is the "golden opportunity moment" for paternal involvement, the Commission recommends to HHS and "other relevant agencies" to "establish additional resources to develop programs" that teach men to "build stronger relationships." *Id.* at 6. The CPIPO also recommends revising any policies that discourage paternal involvement during pregnancy. *See* Amina P. Alio et al., *Addressing Policy Barriers to Paternal Involvement During Pregnancy*, at 427 ("Policies penalizing families with present fathers and policies which do not promote informal paternal involvement as well as policies discouraging fathers and mothers from reporting paternity must be revised."); *see also* Derek M. Griffith et al., *Fathers' Perspectives on Fatherhood and Paternal Involvement During Pregnancy and Childbirth*, at 802, 808 ("Practitioners and policy makers should work to engage fathers as early in the pregnancy as possible, monitor father's mental health and financial stress, and provide resources to educate fathers on maternal health, pregnancy and childbirth, and fathers' rights, roles, and responsibilities.").

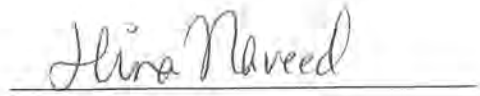
The Appellate Division's interpretation of § 1012 functions to discourage prospective fathers from becoming involved during pregnancy and fostering

healthy relationships with their partners and children. This has very harmful consequences for maternal and fetal health, contrary to the purposes of the statute.

CONCLUSION

The Appellate Division's interpretation of the Family Court Act—finding a prospective father neglectful toward his child solely because he did not control his partner's drug use—is contrary to the plain language of the statute and unconstitutionally infringes upon the rights of both parents and children to family integrity. In direct opposition to the purposes of the statute, this interpretation risks perpetrating severe and unnecessary harm against children and families, and establishes perverse incentives for fathers to withdraw from family life. This Court should, therefore, review the decision below and reverse.

Dated: New York, New York
March 4, 2025



Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
hnaveed@childrensrights.org
(212) 683-2210

Dated: New York, New York
March 4, 2025

Respectfully submitted,

/s/ *Josh Gupta-Kagan*
Josh Gupta-Kagan
Columbia Law School
Family Defense Clinic
434 West 116th Street
New York, New York 10027
Tel: (212) 853-4021
jgupta-kagan@law.columbia.edu

AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 NYCRR) § 500.1(j), Hina Naveed, attorney for the Proposed *Amici Curiae,* hereby affirms that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
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According to the word count feature of the word processing program used to prepare this brief, this brief contains 6,835 words, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or other addendum, which complies with the limitations stated in § 500.13(c)(1).

Dated: New York, New York
March 4, 2025

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
hnaveed@childrensrights.org
(212) 683-2210

AFFIRMATION OF SERVICE

STATE OF NEW YORK
COURT OF APPEALS

In the matter of LUKAS B., A Child Under Eighteen Years of Age Alleged to be 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.*	First Department Appellate Division No. 2023-03054 New York County Family Court Docket No. NN-15499/18

Hina Naveed affirms the following to be true under the penalties of perjury, pursuant to Civil Practice Law and Rules (CPLR) 2106:

I am an attorney for the Proposed *Amici Curiae* in the above-captioned action. I am fully familiar with the facts of this case. On the 4th day of March, 2025, I served the *Notice of Motion For Leave to File as Amici Curiae, Affirmation in Support of Motion For Leave to File as Amicus Curiae*, and *Proposed Brief in Support of Amici Curiae* on the following named individuals:

Chloe Moon, Esq.
NEW YORK CITY LAW DEPARTMENT APPEALS DIVISION
100 Church Street
New York, New York 10007

Attorney for Petitioner-Respondent

Susan Clement, Esq.
THE LEGAL AID SOCIETY JUVENILE RIGHTS PRACTICE
199 Water Street, 3rd Floor
New York, New York 10038

Attorney for Lukas B.

Eliza McDuffie, Esq.
FAMILY JUSTICE LAW CENTER
41 Madison Avenue, 40th Floor
New York, NY 10010

Attorney for Respondent-Appellant

by enclosing one copy in a properly addressed overnight delivery wrapper and placing it into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery, which I deposited in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York.

Dated: New York, New York
March 4, 2025

Hina Naveed

Hina Naveed
Children's Rights
88 Pine Street, Suite 800
New York, NY 10005
hnaveed@childrensrights.org
(212) 683-2210