CASE NO. 12-5724

UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

T. S., next friend of J.S. and K.S.; T. S., next friend of J.S. and K.S.
Plaintiffs - Appellees v.

JOHN DOE
Defendant

and

JAY RONALD HAWS; A. HASAN DAVIS; MITCHELL GABBARD;
REBECCA HARVEY;
GARY SEWELL; GARY DRAKE; JEFF VOYLES, in
their individual capacity
Defendants - Appellants

On Appeal from the United States District Court
For the Eastern District of Kentucky
Civil Case No. 5:10-cv-00217-KSF-REW

BRIEF OF AMICI CURIAE JUVENILE LAW CENTER *ET AL.* IN SUPPORT OF APPELLEES AND URGING AFFIRMANCE

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INTEREST OF AMICI[1]

The organizations submitting this brief work throughout the country on issues of child welfare, juvenile justice and children's rights. *Amici* have a unique perspective on minors who come into contact with the juvenile justice system. Collectively, *Amici* urge the Court to affirm the District Court's ruling that the strip searches of Plaintiffs – conducted not to find contraband or weapons, but to look for illness, injury, or to document body markings – violated their constitutional rights. *Amici* share a deep concern that a ruling holding such strip searches constitutional would subject scores of already vulnerable youth, charged with only status offenses or minor delinquent infractions, to traumatic strip searches when a more narrowly tailored and appropriate intervention, such as a medical exam, could satisfy any legitimate government interest.

IDENTITY OF AMICI

See Appendix for a list and brief description of all *Amici*.

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[1] *Amici* file this brief with the consent of the Appellees, T.S., *et al.*, and with a pending motion for Leave to Appear as *Amici Curiae* dated November 14, 2012. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A list and brief description of all *Amici* appears in the Appendix.

INTRODUCTION

This case involves a question of exceptional importance regarding the constitutionality under the Fourth Amendment of the Breathitt Regional Juvenile Detention Center (BRJDC) policy of conducting suspicionless strip searches on juveniles arrested on minor violations – in this case, public intoxication. BRJDC conducted the searches not to locate contraband or weapons, but rather to detect illness, injury, and signs of abuse, and to document deformities, scars or tattoos. No court has ever upheld such a strip search as constitutional. Rather, the body of case law on strip searches in detention centers focuses on the government's interest in protecting safety by intercepting weapons and contraband.

The Constitution protects citizens from unreasonable searches by requiring searches to be based on a warrant and probable cause. In a very limited set of circumstances, government actors may conduct searches when there is a "special need" for the search. A search to detect abuse or injury does not qualify as a "special needs" search. As a result, the searches at issue, which took place absent a warrant and probable cause, violated the Fourth Amendment. Moreover, even applying the special needs test, which requires the court to balance the intrusiveness of the search against the need for the information, the search was unconstitutional. The Supreme Court and courts around the country, relying on social science research, have recognized that strip searches are frightening,

demeaning and degrading, and that juveniles are particularly vulnerable to harm from such searches. While the government may have an interest in detecting abuse, illness or injury, the search here, conducted by untrained personnel with no medical expertise, was not tailored to accomplish its goals, and cannot outweigh the harm of the strip search.

ARGUMENT

I. THE FOURTH AMENDMENT REQUIRES UNIQUE PROTECTIONS FOR JUVENILES

Appellants rely upon the Supreme Court's recent decision in *Florence v. Board of Chosen Freeholders*, 132 S. Ct. 1510 (2012), to support their argument that the search in this case was constitutional. In *Freeholders*, the Supreme Court held that adults arrested for minor, nonviolent offenses can be subject to strip searches upon admission to facilities, even in the absence of reasonable suspicion to believe that they are concealing weapons or contraband. *Freeholders* is inapt for two reasons. First, *Freeholders*, like the other special needs cases cited by Appellants, involved a search for weapons and contraband. It simply cannot be compared with a body scan for medical findings by non-medical personnel. *See, infra,* Sections II and III. Second, *Freeholders* applies to adult pre-trial detainees, not to juveniles.

The Supreme Court has long held that juveniles deserve unique protections under the Constitution. As Justice Frankfurter so aptly explained, "[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Accordingly, the Supreme Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights in both civil and criminal law. As the Court recently explained, "'[o]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults," in part because they are uniquely susceptible to outside pressure. *J.D.B. v. North Carolina,* 131 S. Ct. 2394, 2397 (2011) (applying a "reasonable child" standard to the inquiry into whether an individual is in custody for *Miranda* purposes).[2]

[2] Thus the Supreme Court has applied a distinct juvenile standard in a wide variety of contexts including, for example, First Amendment free speech cases, *e.g., Lee v. Weisman*, 505 U.S. 577 (1992), Fifth Amendment due process voluntariness cases, *e.g. Gallegos v. Colorado*, 370 U.S. 49 (1962), Fourteenth Amendment due process cases, *e.g. Haley v. State of Ohio*, 332 U.S. 596 (1948), *Gallegos, supra,* and Eighth Amendment sentencing cases, *e.g., Roper v. Simmons,* 543 U.S. 551 (2004), *Graham v. Florida*, 130 S. Ct. 2011 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

More specifically, the Supreme Court has held that adolescents may be uniquely impressionable and vulnerable to harm, and that these characteristics are constitutionally relevant. Indeed, the Supreme Court has recognized that teenagers' susceptibility to harm from strip searches may outweigh the state's interest in searching a child to detect contraband. *See Safford Unified School District v. Redding*, 557 U.S. 364 (2009) (holding a strip search on school grounds unconstitutional, and noting that, "adolescent vulnerability intensifies the patent intrusiveness of the exposure" of a strip search). Similarly, the Court has recognized that exposure to obscenity may be harmful to minors even when the exposure would not harm adults, requiring application of a different First Amendment obscenity standard to children. *Ginsburg v. New York*, 390 U.S. 629, 637 (1968). *See also Denver Area Educational Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 743 (1996) (upholding a statute regulating obscene programming on cable TV in part because of "the importance of the interest at stake here-protecting children from exposure to patently offensive depictions of sex.").

Moreover, the Supreme Court has explicitly recognized the importance of a separate, rehabilitative juvenile justice system. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 539-40 (1971) (refusing to apply a constitutional right to jury trial in juvenile court because of the importance of allowing states to provide

rehabilitation to youth). Indeed, the Kentucky juvenile code, which establishes the standards for treating youth in its juvenile justice system, establishes special goals inapplicable in the adult system, including the "protection of children" and promotion of the "best interests of the child," as well as a clear priority to "rehabilitate delinquent youth." KY. REV. STAT. ANN. § 600.010 (West).[3]

The Constitutional analysis used to test public officials' treatment of charged adults in the criminal justice system cannot be transferred willy-nilly to adolescents charged in the juvenile system. *Freeholders* sheds little light on the constitutionality of the strip search at issue in this case.

II. A SUSPICIONLESS STRIP SEARCH OF ADOLESCENTS TO DETECT ILLNESS, INJURY AND ABUSE AND TO DOCUMENT BODY MARKINGS IS NOT A "SPECIAL NEEDS" SEARCH

"The fundamental command of the Fourth Amendment is that all searches and seizures be reasonable. . . ." *New Jersey v. T.L.O.,* 469 U.S. 325, 340 (1985). Generally, for a search to be constitutional, officers must have a warrant based on

[3] *Cf. Reynolds,* 379 F.3d 358. The Court recognized that the situation of "juvenile delinquent inmates of the Bellewood Home lay somewhere between that of prison inmates and students in school." Unlike the present case, *Reynolds* applied to youth adjudicated delinquent and placed in a private group home facility, and involved a search for contraband. The Court went on to permit the search because of the strong government interest in locating contraband and the significant evidence that staff had reasonable suspicion that a strip search would result in the discovery of contraband.

probable cause. *See e.g. Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602, 619 (1989).[4] The Supreme Court has clarified that exceptions to this requirement should be rare. *T.L.O.,* 469 U.S. at 351 ("Only in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers."). In "special needs" cases where the requirement of a warrant and probable cause is "impracticable," and therefore not required, courts must balance the need for the particular search against the invasion of personal rights that the search entails. *See, e.g. Board of Educ. v. Earls*, 536 U.S. 822, 829 (2002) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 873). In such cases, courts must consider the scope of the particular intrusion, the manner in which it was conducted, the justification for initiating it, and the place in which it is conducted. *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

The special needs test does not apply to detention center searches to detect abuse, injury, or illness. Thus, the search was unconstitutional absent parental consent or exigent circumstances, neither of which existed here. This Circuit and others have applied the "special needs" test to strip searches of juveniles in detention facilities only in cases where a purpose of the search is the detection of

[4] The Fourth Amendment's search and seizure provisions are applicable to the defendants through the Fourteenth Amendment's Due Process Clause. *See, e.g., Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

contraband. *See N.G. v. Connecticut*, 382 F.3d 225 (2d Cir. 2004); *Smook v. Minnehaha County*, 457 F.3d 806 (8th Cir. 2006); *Reynolds v. City of Anchorage*, 2004 FED App. 0264P, 379 F.3d 358 (6th Cir. 2004). In such cases, the institution's interest in maintaining safety may create a unique need that entitles officials to bypass the warrant and probable cause requirements of the Fourth Amendment. *See N.G.*, 382 F.3dat 236 ("[T]he age of the children ... provides the State with an enhanced responsibility to take reasonable action to protect them from hazards resulting from the presence of contraband where the children are confined."); *Reynolds*, 379 F.3d at 364 ("The [juvenile facility] was a unique place fraught with a variety of problems and dangers, including the use of drugs by its residents. The need to maintain discipline and order there [justified the search].").

The Sixth Circuit has never directly decided whether a strip searched to detect abuse constitutes a "special needs" search, or whether such a search requires a warrant and probable cause. The majority of other circuits to address the issue, however, have applied the warrant and probable cause requirements to such searches. *See, e.g., Michael C. v. Gresbach,* 526 F.3d 1008 (7th Cir. 2008) (applying warrant and probable cause analysis to visual inspection of children at school for signs of abuse); *Roe v. Texas Dept. of Protective and Regulatory Services,* 299 F.3d 395 (5th Cir. 2002) (requiring probable cause and court order for a body cavity search of a child); *Good v. Dauphin County Soc. Servs. for Children*

& Youth, 891 F.2d 1087, 1092 (3d Cir. 1989) (applying warrant and probable cause standard to search of home and strip search of child); *Calabretta v. Floyd*, 189 F.3d 808, 817-18 (9th Cir. 1999) (applying warrant and probable cause requirement to strip search of three year old in her own home); *Franz v. Lytle,* 997 F.2d 784, 791 (10th Cir. 1993) (requiring warrant and probable cause for strip search of an infant); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194 (10th Cir.2003) (special needs doctrine did not apply because there was not any showing that securing a parent's consent genital examinations of pre-school students was impracticable); *Tenenbaum v. Williams,* 193 F.3d 581, 604-05 (2d Cir. 1999) (requiring judicial approval where social workers removed five-year-old from school and had physician perform gynecological exam).[5]

While detecting injury, illness, or abuse may be important government interests, they are not so urgent as to justify warrantless searches. *See, e.g., Roe v. Texas Dept. of Protective and Regulatory Services*, 299 F.3d 395, 407-08 (5th Cir. 2002) ("In non-exigent circumstances, [child protective services] has time to obtain a warrant either personally to conduct a visual body cavity search or to have a physician perform it. . . . We conclude, therefore, that a social worker must

[5] *But see Darryl H. v. Coler,* 801 F.2d 893 (7th Cir.1986) (applying special needs test to assess constitutionality of physical examination of child's body for evidence of abuse and remanding to district court, but cautioning that a significant quantum of suspicion is needed for such searches); *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir.1993) (applying special needs doctrine to a nurse's medical exam to check for physical abuse during a home visit).

demonstrate probable cause and obtain a court order, obtain parental consent, or act under exigent circumstances to justify the visual body cavity search of a juvenile. ").[6] Indeed, adolescents are in close contact with one another at a variety of public institutions every day, including schools. Courts have never suggested that the importance of detecting illness, abuse, or injury is so significant as to obviate the need for parental consent to a strip search.

III. EVEN APPLYING THE SPECIAL NEEDS TEST, THE SEARCH IS UNCONSTITUTIONAL BECAUSE THE SERIOUS HARM TO JUVENILES FROM STRIP SEARCHES OUTWEIGHS THE GOVERNMENT INTEREST

Moreover, even if strip searches to detect abuse in juvenile facilities could be classified as special needs searches, the need for individualized suspicion[7] would not be obviated. Indeed, in *Reynolds*, the Sixth Circuit allowed the strip search of a juvenile precisely because there was reasonable suspicion to believe the girl searched was in possession of contraband that could have been harmful to her or others in the facility. 379 F.3d at 362, 366 ("[The search] was reasonable because Officer Watson had a reasonable suspicion that the girls possessed

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[6] Although the search at issue in *N.G.* allowed officials to search for signs of abuse and neglect, the Court was clear that the search was primarily designed to detect contraband. *See, infra, Section III B.*

[7] The very terms we use here underscore the inappropriateness of the search. In this case, there could be no "individualized suspicion," as the search was not designed to turn up contraband or evidence of unlawful activity.

narcotics," the facility had serious problems with drug use, and Plaintiff had insinuated that she was hiding drugs in her underwear).

The category of constitutionally permissible suspicionless searches is "closely guarded." *Chandler v. Miller*, 520 U.S. 305, 309 (1997). Although searches absent individualized suspicion can sometimes be constitutional, s*ee, e.g., Board of Educ. v. Earls*, 536 U.S. 822 (2002), the determination that a case fits the "special needs" exception to the warrant requirement does not automatically eliminate the requirement of individualized suspicion. *See, e.g., Griffin v. Wisconsin*, 483 U.S. 868 (1987); *T.L.O.,* 469 U.S. 325. "Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 342 n.8 (1985).

As a result, the vast majority of suspicionless tests upheld by the Supreme Court and this court have been drug tests in which the Court has characterized the intrusion of privacy as minimal or even "negligible." *See, e.g., Earls*, 536 U.S. 822; *Vernonia Dist. 47J v. Acton,* 515 U.S. 646 (1995), *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989). *See also Int'l Union v. Winters*, 385 F.3d

1003, 1013 (6th Cir. 2004) (characterizing urine collection procedure as "even less intrusive than the monitoring sustained in *Vernonia* as 'negligible.'"); *Wilson v. Collins*, 517 F.3d 421, 428 (6th Cir. 2008) ("swabbing of saliva to obtain a DNA sample is even less invasive than the [minimal intrusion implicated by] the drawing of a blood sample").

The Supreme Court has upheld the serious intrusion of a strip search without individualized suspicion only in a case involving exceptional security concerns. *See Bell v. Wolfish,* 441 U.S. 520 (1979).[8] *See also N.G.,* 382 F.3d 225 ("the State [has] an enhanced responsibility to take reasonable action to protect [children] from hazards resulting from the presence of contraband where [they] are

[8] *Bell* found constitutional a strip search of adults confined post-arraignment to discover and deter the smuggling of weapons, drugs, and other contraband into the institution. The population included those for whom "no other less drastic means" could reasonable ensure their presence at trial as well as "convicted inmates who are awaiting sentencing or transportation to federal prison or who are serving generally relatively short sentences. . . convicted prisoners who have been lodged at the facility under writs of habeas corpus *ad prosequendum* or *ad testificandum* issued to ensure their presence at upcoming trials, witnesses in protective custody, and persons incarcerated for contempt." *Id.* at 524. The Court concluded that an adult detention facility was "a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record, . . . and in other cases." *Id.* at 559 (internal citations omitted). The only other suspicionless special needs searches the Supreme Court has upheld beyond the drug tests mentioned above involve lesser intrusions (such as apartment or pat-down searches) of those with diminished expectations of privacy resulting from their status as convicted criminals under state supervision. *See United States v. Knights,* 534 U.S. 112 (2001); *Samson v. California,* 126 S. Ct. 2193 (2006).

confined"); *Smook*, 457 F.3d 806 (citing *N.G.*). Such security concerns were simply not at issue in the body scan here. The body scan search does not meet the stringent test for a suspicionless, warrantless search. As described below, a strip search is a severe and even traumatic intrusion, particularly for adolescents, and the government's interest in having non-medical personnel identify illness, injury, and body markings is relatively minimal.

A. Strip Searches of Juveniles Detained for Minor Offenses are Highly Intrusive

"It is axiomatic that a strip search represents a serious intrusion upon personal rights." *Justice v. City of Peachtree City*, 961 F.2d 188, 192-93 (11th Cir. 1992). *See also Wood v. Clemons*, 89 F.3d 922, 928 (1st Cir. 1996); *Giles v. Ackerman*, 746 F.2d 614, 615 (9th Cir. 1984), overruled on other grounds by *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1040 n.1 (9th Cir. 1999)). Courts have repeatedly recognized that being forced to strip in front of a stranger can be frightening, demeaning, and degrading. *See Chapman v. Nichols*, 989 F.2d 393, 396 (10th Cir. 1993) (strip searches are "terrifying"); *Justice v. City of Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992) ("The experience of disrobing and exposing one's self for visual inspection by a stranger clothed with the uniform and authority of the state . . . can only be seen as thoroughly degrading and frightening. . . . [S]uch a search upon an individual detained for a lesser offense is quite likely

to take that person by surprise, thereby exacerbating the terrifying quality of the event."); *see also Thompson v. City of Los Angeles*, 885 F.2d 1439, 1446 (9th Cir. 1989) (strip searches produce "feelings of humiliation and degradation"); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (strip searches are "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission"); *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir. 1982) ("[A] strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.").

The U.S. Supreme Court has acknowledged that strips searches are highly intrusive, and that "adolescent vulnerability intensifies the exposure's patent intrusiveness." *Safford Unified School District v. Redding*, 557 U.S. 364, 366 (2009). Lower courts also recognize that children and teenagers perceive strip searches as particularly intrusive. *See, e.g., Thomas ex rel. Thomas v. Roberts*, 261 F.3d 1160, 1168 (11th Cir. 2001) (children expect that "we should be able to avoid the unwanted exposure of one's body, especially one's 'private parts'"); *Jenkins v. Talladega City Bd. of Educ.*, 95 F.3d 1036, 1044 (11th Cir. 1996) ("[T]he perceived invasiveness and physical intimidation intrinsic to strip searches may be exacerbated for children."); *Cornfield v. Consol. High Sch. Dist. No. 230*, 991 F.2d 1316, 1323 (7th Cir. 1993) (strip search was particularly intrusive on sixteen year

old, because at that age "children are extremely self-conscious about their bodies"); *Doe v. Renfrow*, 631 F.2d 91, 93 (7th Cir. 1980) (strip search of thirteen year old was a "violation of any known principle of human decency").

Research in adolescent development supports the conclusion that strip searches impact young people even more severely than adults. *See generally* Anne Peterson & Brandon Taylor, *The Biological Approach to Adolescence: Biological Change and Psychological Adaption, Handbook of Adolescent Psychology* (Joseph Adelson ed., 1980). Because adapting to physical maturation is a key psychological task of adolescence, teenagers tend to be more self-conscious about their bodies than those in other age groups. *See id.* at 144; *see also* Edward Clifford, *Body Satisfaction in Adolescence*, in ADOLESCENT BEHAVIOR AND SOCIETY: A BOOK OF READINGS 53 (Rolf E. Muuss ed., 3d ed. 1980). With the onset of puberty, normal teenagers begin to view their bodies critically, and compare them to those of their peers and their ideals, making adolescents particularly vulnerable to embarrassment. *See* F. Philip Rice & Kim Gale Dolgin, *The Adolescent: Development, Relationships and Culture* 173 (10th ed. 2002).

Surveys confirm that adolescents tend to be anxious, dissatisfied, and preoccupied with their bodies. *See* Peterson & Taylor, *supra*, at 144-45. This body criticism is not happenstance; rather, it is part and parcel of the job of

obtaining autonomy from the family and "assum[ing] the role of an adult in society." William A. Rae, *Common Adolescent-Parent Problems*, in HANDBOOK OF CLINICAL CHILD PSYCHOLOGY 555 (C. Eugene Walker & Michael C. Roberts eds., 2d ed. 1992). Accordingly, teenagers have a heightened need for personal privacy. *See* Gary B. Melton, *Minors and Privacy: Are Legal and Psychological Concepts Compatible*? 62 NEB. L. REV. 455, 488 (1983). *See generally* Ellen Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality and Juvenile Delinquency*, 11 GEO. J. LEGAL ETHICS 509 (1998). Thus, for an adolescent, privacy is a "marker of independence and self-differentiation." Melton, *supra*, at 488. If the child's privacy is threatened, the resulting stress can seriously undermine the child's self-esteem. *See* Rae, *supra*, at 561 (noting the importance of confidentiality when working with adolescents); Rice & Dolgin, *supra*, at 180 (noting the negative impact of stress upon self-esteem and adolescent development).

Researchers have concluded that strip searches can seriously traumatize children, leading them to experience years of anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars. *See* Scott A. Gartner, Note, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. CAL. L. REV. 921, 929 (1997) (describing

lasting and debilitating psychological effects of school's strip search of a student); *see also* Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413, 520-21 (2005) (noting that searches that would violate the Fourth Amendment for adults cause children to suffer "trauma, anxiety, fear, shame, guilt, stigmatization, powerlessness, self-doubt, depression and isolation").[9]

Strip searches can be particularly damaging for youth in the juvenile justice system, many of whom have experienced childhood trauma, including sexual abuse. The vast majority of youth in the juvenile justice system have histories of exposure to traumatic events. *See* Julian D. Ford *et al.*, *Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions*, 57 JUV. & FAM. CT. J. 13, 13 (2006). Three out of four children in the juvenile justice system have suffered from childhood trauma. *See id.* "In one study of juvenile detainees, 93.2% of males and 84% of females reported having a traumatic experience" in their histories. GORDON R. HODAS, PA. OFF. OF MENTAL HEALTH & SUBSTANCE ABUSE SERVS., RESPONDING TO CHILDHOOD TRAUMA: THE PROMISE AND PRACTICE OF TRAUMA INFORMED CARE 17 (2006). Even children detained because of status offenses may have

[9] Coleman further notes that "children who are subject to genital examinations appear to experience the investigatory examinations as sexual abuse." 47 WM. & MARY L. REV. at 521.

disproportionately high trauma rates. Researchers have found high rates of physical and sexual abuse among children who run away from home. *See* Wan-Ning Bao et al., *Abuse, Support, and Depression Among Homeless and Runaway Adolescents*, 41 J. HEALTH & SOC. BEHAV. 408, 408 (2000).[10] As a consequence of significant exposure to traumatic events, large numbers of children in the juvenile justice system suffer from posttraumatic stress disorder (PTSD) and other stress-related disorders. JUV. JUST. WORKING GROUP, NAT'L CHILD TRAUMATIC STRESS NETWORK, TRAUMA AMONG GIRLS IN THE JUVENILE JUSTICE SYSTEM (2004), *available at* http://www.nctsnet.org/nctsn_assets/pdfs/edu_materials/trauma_among_girls_in_jjsys.pdf [hereinafter NCTSN TRAUMA REPORT].[11]

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[10] Researchers concluded that "70 percent of adolescents in shelters have been physically and/or sexually abused by family members." *Id.* In one study of male runaways, researchers found that "71.5 percent of the [interviewees] reported physical abuse and 38.2 percent reported sexual abuse in their families." *Id.* In another study, researchers found that 37 percent of girl runaways "had been forced to have sexual activity with an adult caretaker." *Id.*

[11] "Rates of PTSD among youth in juvenile justice settings range from 3 percent in some [studies] to over 50 percent in others. These rates are up to eight times as high as [those] in community samples of similar age peers." NCTSN TRAUMA REPORT at 3. In one study of incarcerated boys, over thirty percent presented symptoms of PTSD. *See* Elizabeth Cauffman et al., *Posttraumatic Stress Disorder Among Female Juvenile Offenders*, 37 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1209, 1213 tbl.1 (1998). Rates of PTSD are even higher for girls in the juvenile justice system, as one study of incarcerated girls found that over sixty-five percent had experienced PTSD at some time in their lives. *See id.* at 1212.

Because strip searches can trigger flashbacks and exacerbate a traumatized child's stress and mental-health problems, strip searches undermine, rather than protect, the child's well-being. *See* Coleman, *supra*, at 417. *See also* Michele R. Pistone, *Justice Delayed Is Justice Denied: A Proposal for Ending the Unnecessary Detention of Asylum Seekers*, 12 HARV. HUM. RTS. J. 197, 205-10 (1999) (explaining that the physical and mental health of asylum seekers in detention centers deteriorates with strip searches, pat downs, and prolonged isolation). Children subjected to these searches may experience the searches as sexual violence. *See* Coleman, *supra*, at 520-21. Thus, the "profound irony" of protecting children by allowing them to be searched is that, in many instances, the search itself *inflicts* trauma. Coleman at 417. For this reason, courts must carefully examine the government's interest in the search to determine whether it outweighs the severity of the harm of the intrusion on the juvenile.

B. The Kentucky Department of Juvenile Justice's Need for the Search Does Not Outweigh the Harm of the Intrusion

Kentucky's proffered interests in detecting abuse, detecting illness or infection and assessing body markings, fail to justify the strip searches of J.S., K.S. and other similarly situated youth.

The Supreme Court has made clear that it is not enough for the government to establish a state interest in order to justify a search—it must demonstrate "an interest that appears important enough to justify the particular search at hand, in

light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 661 (1995). An intrusive strip search, in particular, "implicate[s] the rule of reasonableness as stated in *T.L.O.*, that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." *Redding*, 557 U.S. at 366 (internal quotation marks omitted). In order to justify "an invasion of constitutional rights of some magnitude," the government interest must be "important enough" and the search must be conducted in a manner that is "reasonably related in scope." *Renfrow*, 631 F.2d at 92-3. Defendants have demonstrated neither.

Defendants admit that the purpose of the search pursuant to the Body ID policy was "not to discover contraband." Rather, "the purpose of the procedure is to document any obvious signs of injury, illness, infection or abuse." *T.S. v. Gabbard,* 860 F.Supp.2d 384 at 392.[12] For this reason, the Body ID policy is readily distinguishable from the searches at issue in *Smook* and *N.G.,* and does not justify the severe intrusion of the strip search. The primary special needs asserted by the State in *N.G.*, 382 F.3d at 236, and adopted by the Eighth Circuit in

[12] According to the trial court order, the Body ID Process consists of a BRJDC employee visually observing the juvenile's nude body for signs of abuse, illness/infection, physical injury, deformities, scars, tattoos, or other such markings, and documenting these observations in a "Body ID Form." Any physical problems or abnormalities are referred to the medical staff for review. 860 F.Supp.2d 384 at 387.

Smook, 457 F.3d at 812, were 1) protecting the confined children from hazards resulting from the presence of contraband, and 2) "locating and removing concealed items that could be used for self-mutilation or … suicide." 382 F.3d at 236 (recognizing the state's "*primary* non-law enforcement purposes—to protect the children from harm inflicted by themselves or other inmates, and to protect the safety of the institution" (emphasis added)). Although the *N.G.* Court also gave weight to the facility's interest in detecting abuse, the court recognized that detection of abuse, on its own, might not justify the search. *N.G.* 382 F.3d at 237 ("Whether or not this justification alone would support a strip search, it permissibly adds to the combination of 'special needs' that confront the State at a child's initial admission to a detention facility.") Given the focus on weapons and contraband, the reasoning of *N.G.* and *Smook* is not persuasive in the present case.

The purpose of detecting abuse, on its own, cannot justify a suspicionless strip search. While the government may have a legitimate interest in child abuse investigations, that interest does not justify a suspicionless strip search by non-medical personnel, particularly when a more carefully tailored intervention could work. As the Seventh Circuit has explained

> Recognizing the sensitive nature of [child abuse] investigations, officials may make a search or seizure under exigent circumstances, where they have reason to believe life or limb is in jeopardy. We do not exempt child welfare workers from adhering to basic Fourth Amendment principles under non-exigent circumstances—to do so would be imprudent. In these circumstances, caseworkers can take preliminary steps short of searches,

> such as interviewing the child and a parent, or obtaining a warrant either personally to conduct a search or to have a doctor perform the search.

Michael C. v. Gresbach, 526 F.3d 1008 (7th Cir. 2008) (*citations omitted*). Thus, even when officials have individualized suspicion that abuse has occurred, a strip search may be unconstitutional. *Darryl H. v. Coler,* 801 F.2d 893 (7th Cir. 1986) (concluding that a search based upon an anonymous tip that a child was harmed or in danger of harm and that identifies a specific incident may not be sufficient to justify a strip search). *See also Dubbs,* 336 F.3d at 1214 ("While it is certainly true that a properly conducted physical examination is 'an effective means of identifying physical and developmental impediments in children,' this supplies no justification for proceeding without parental notice and consent.").

The government's interest in detecting illness or infection also does not outweigh the harm from the intrusive strip search. Indeed, Defendants cite no authority upholding the constitutionality of a strip search to detect illness or injury. Rather, the strip search cases almost exclusively focus on the detection of contraband and weapons. *See N.G. v. Connecticut*, 382 F.3d 225 (2d Cir. 2004); *Smook v. Minnehaha County*, 457 F.3d 806 (8th Cir. 2006); *Reynolds v. City of Anchorage*, 2004 FED App. 0264P, 379 F.3d 358 (6th Cir. 2004). Moreover, a strip search is not an appropriate method to detect illness or injury. As the trial court noted, the detention staff tasked with conducting the strip searches in this case were not medically qualified to identify infection or disease. *Gabbard,* 860

F.Supp.2d at 392. While detection of illness or infection may be a legitimate state interest, the government must demonstrate some nexus between the intrusion and the government need. *See T.L.O.*, 469 U.S. at 341 (citing *Terry v.* Ohio, 392 U.S. 1, 20 (1968)). In this case, Defendants have failed to show that the BRJDC personnel administering the Body ID are capable of detecting the asserted object of the search.

To be reasonable in scope, a search must not be "excessively intrusive in light of the age and sex of the [child] and the nature of the infraction." *Safford Unified School Dist. No. 1 v. Redding*, 57 U.S. 364 (2009). In this case, the trial court rightly found that "the purpose of the search—to identify illness or injury—could have easily been accomplished by less intrusive means." *Gabbard,* 860 F.Supp.2d at 393. Indeed, a medical exam conducted by qualified personnel would be less intrusive, far less degrading and more closely related to the asserted purpose of the search. In light of the Supreme Court's recognition that adolescents are particularly vulnerable to harms from strip searches, *Redding*, 557 U.S. at 366, *see also Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) ("youth ... is a ... condition of life when a person may be most susceptible ... to psychological damage"), such searches should only be used when no less harmful and intrusive option can practically accomplish the same ends.

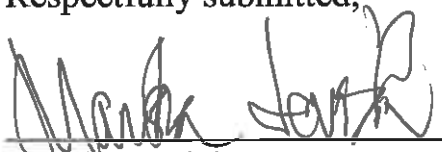
Lastly, the Body ID policy requires BRJDC personnel to document deformities, scars, tattoos and other such markings. *Gabbard,* 860 F.Supp.2d at 387. The only justification Appellants provided was that the discovery of tattoos could reveal gang affiliations. This argument is waived, as it was raised for the first time on appeal. Appellants never identified the issue to the trial court, nor did the trial court have an opportunity to rule on it. "[A]n argument not raised before the district court is waived on appeal to this Court." *Scottsdale Ins. Co. v. Flowers,* 513 F.3d 546, 552 (6th Cir.2008)(citations omitted). More specifically, a factual argument not presented in argument at summary judgment cannot later be raised on appeal. *White v. Anchor Motor Freight, Inc.,* 899 F.2d 555, 559 (6th Cir.1990) (stating that this Court only reviews "the case presented to the district court rather than a better case fashioned after the district court's order" (internal quotation marks and citation omitted)). *See also Holland v. Sam's Club,* 487 F.3d 641, 644 (8th Cir.2007) ("[T]he district court is not obligated to wade through and search the entire record for some specific facts which might support the nonmoving party's claim, rather the nonmoving party must designate the specific genuine issues of material fact that preclude summary judgment. Even though on appeal Holland designated the specific facts supporting [the claim], Holland waived this argument by not presenting it to the district court." (*internal citation and quotation omitted*)).

Moreover, assuming arguendo that the government may have a legitimate interest in assessing gang membership of an individual entering detention, Defendants have not articulated why a complete strip search would be necessary to locate such tattoos, or why such a search must take place in the absence of individualized suspicion of gang membership. Indeed, to the extent that gang tattoos are often worn to identify a gang member to others, they are often on hands, faces, and arms – parts of the bodily easily visible to other possible gang members – and thus fully visible on a clothed individual. As with identification of illness or injury, the ends of detecting gang membership could have been accomplished by less intrusive and traumatizing means.

CONCLUSION

The BRJDC Body ID process was not a special needs search, and should have been found unreasonable in the absence of a warrant, probable cause, parental consent, or exigent circumstances. Moreover, even if the search did fall under the special needs exception, the extreme harm it caused outweighed the government's asserted interests, particularly in light of the less intrusive means available to discover the information. *Amici* therefore respectfully request that this Court affirm the decision of the court below in holding the search unconstitutional.

Respectfully submitted,



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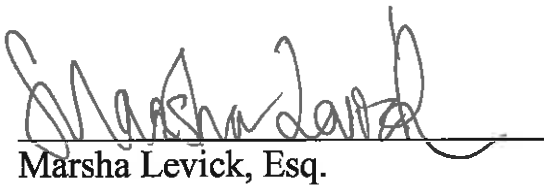
CERTIFICATE OF COMPLICANCE WITH FED. R. APP. P. 32(A)(7)

Pursuant to 6th Cir. R. 32(a) and Rule 32 (a)(7)(B), Marsha Levick, Esq., undersigned counsel of record certifies that this brief complies with the type and volume limitations of Rule 32(a)(7). According to the word count in the word-processing system employed in drafting this brief (Microsoft Word 2010), the brief contains 6,204 words. The brief has been prepared in Times New Roman 14-point type, a proportionally spaced font with serifs. The undersigned understands that a material representation in completing this certificate or the circumvention of the type and volume limits set forth in Rule 32(a)(7), may result in the Court striking the brief and imposing sanctions against the person signing the brief.



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Dated: November 14, 2012.

CERTIFICATE OF SERVICE

I, Marsha Levick, Esq., certify that, on this 15th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve a copy upon the following counsel:

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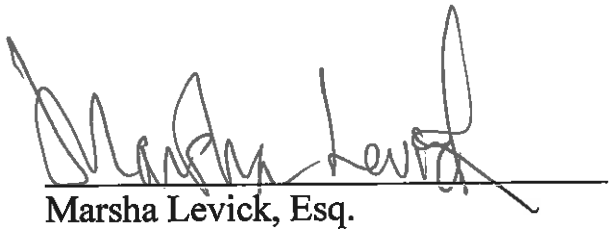

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APPENDIX:

IDENTITY OF AMICI AND STATEMENTS OF INTEREST

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well-being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **American Civil Liberties Union (ACLU)** is a nationwide, non-partisan organization of more than 500,000 members dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Through its Criminal Law Reform Project, the ACLU works to reduce the number of people entering jails and prisons, strives to protect the constitutional rights of defendants in the criminal justice system, and seeks an end to excessively harsh policies that result in mass incarceration and stand in the way of a just and equal society. The ACLU of Kentucky—the ACLU's local affiliate—shares the same commitment to justice and equality, and itself has a long history of advocating for the civil rights and civil liberties of Kentuckians, under both the United States and Kentucky Constitutions.

The **Barton Child Law & Policy Clinic** 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 juvenile justice systems in Georgia. The Center achieves its reform objectives through research-based policy development, legislative advocacy, and holistic legal representation for individual clients. The Barton Center's children's rights agenda is based on the belief that policy and law should be informed by research and that legal service to children and families need to be holistic. That basis recognizes that children should be 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. The Barton Center adopts an interdisciplinary, collaborative approach to achieving justice for youth.

The Barton Center was founded in March 2000 and has engaged in the legal representation of juveniles in delinquency cases since the summer of 2001. In 2010 the Barton Center added an appellate representation dimension through its Appeal for Youth Clinic, which seeks systemic reform through the holistic appellate representation of offenders in our juvenile and criminal justice systems.

The **Children and Family Justice Center (CFJC)** is a comprehensive children's law center that has represented young people in conflict with the law for over 20 years. In addition to its direct representation of youth and families in matters relating to delinquency and crime, school discipline, immigration/asylum and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations to develop fair and effective strategies for systems reform.

Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community-based resources throughout the state. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system.

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to

both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

The **Juvenile Rights Advocacy Project (JRAP)** is curricular law clinic, based at Boston College Law School since 1995. JRAP represents youth, with a focus on girls, who are in the delinquency or status offense systems, across systems and until the youth reach majority. JRAP attorneys use legal system to access social services and community supports for youth, hold systems accountable, and reduce the use of incarceration. JRAP also conducts research and policy advocacy for youth in the justice system. Among its work, JRAP seeks to develop and model programs for delinquent girls that reduce the use of incarceration and detention, and prompt systems to work collaboratively to shore up community resources supporting youth.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. We provide holistic advocacy through teams of attorneys and social workers in the area of abuse and neglect, immigration and education. We empower clients by actively involving them in critical decisions about their lives. We believe that all legal decisions and actions involving children and youth must take research on child development and the unique needs of children into account.

The **Midwest Juvenile Defender Center (MJDC)** is an eight state regional network of defense attorneys representing juveniles in the justice system. It was created to increase the capacity of juvenile defenders in the Midwest. MJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime. MJDC

provides support to juvenile defenders to ensure that youth are treated fairly in the justice system.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The mission of the **National Juvenile Justice Network (NJJN)** leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises forty-one members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner focused on their rehabilitation. Youth should not be transferred into the punitive adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and are exposed to serious, hardened criminals. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development.

The mission of the **North Carolina Office of the Juvenile Defender** can be described in four parts: to provide services and support to defense attorneys, to evaluate the current system of representation and make recommendations as needed, to elevate the stature of juvenile delinquency representation, and to work

with other juvenile justice actors to promote positive change in the juvenile justice system. The Office of the Juvenile Defender is interested in this case as it impacts the constitutional rights of juveniles, particularly those juveniles facing life sentences without the possibility of parole.

The **Northeast Juvenile Defender Center** is one of the nine Regional Centers affiliated with the National Juvenile Defender Center. The Center provides support to juvenile trial lawyers, appellate counsel, law school clinical programs and nonprofit law centers to ensure quality representation for children throughout Delaware, New Jersey, New York, and Pennsylvania by helping to compile and analyze juvenile indigent defense data, offering targeted, state-based training and technical assistance, and providing case support specifically designed for complex or high profile cases. The Center is dedicated to ensuring excellence in juvenile defense by building the juvenile defense bar's capacity to provide high quality representation to children throughout the region and promoting justice for all children through advocacy, education, and prevention.

Based in one of our nation's poorest cities, the **Rutgers School of Law – Camden Children's Justice Clinic** is a holistic lawyering program using multiple strategies and interdisciplinary approaches to resolve problems for indigent facing juvenile delinquency charges, primarily providing legal representation in juvenile court hearings. While receiving representation in juvenile court and administrative hearings, clients are exposed to new conflict resolution strategies and be educated about their rights and the implications of their involvement in the juvenile justice system. This exposure assists young clients in extricating themselves from destructive behavior patterns, widen their horizons and build more hopeful futures for themselves, their families and their communities. Additionally, the Clinic works with both local and state leaders on improving the representation and treatment of at-risk children in Camden and throughout the state.

Rutgers Urban Legal Clinic (ULC) is a clinical program of Rutgers Law School – Newark, established more than thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House – New Jersey, staff of the New Jersey State Legislature, and a host of out-of-state organizations on a range of juvenile justice practice and policy issues.

The ULC is a team leader of the New Jersey Juvenile Indigent Defense Action Network, an initiative of the John D. and Catherine T. MacArthur Foundation that, among other efforts, seeks to provide post-dispositional legal representation to young people committed to the New Jersey Juvenile Justice Commission.

The **Southern Juvenile Defender Center** is one of nine regional centers created by the National Juvenile Defender Center (NJDC) to enhance the juvenile defense bar's capacity to provide high quality representation. The Southern Juvenile Defender Center offers technical assistance and advice to juvenile defenders, facilitates networking opportunities for juvenile defenders, conducts state and regional trainings and gathers and analyzes juvenile indigent defense data. The Southern Juvenile Defender Center is interested in this case as it impacts the constitutional rights of juveniles, particularly those juveniles facing life sentences without the possibility of parole.

The **W. Haywood Burns Institute (BI)** is a San Francisco-based national nonprofit organization with a mission to protect and improve the lives of youth of color, poor youth and the well-being of their communities by reducing the adverse impacts of public and private youth-serving systems to ensure fairness and equity throughout the juvenile justice system. BI works with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system. Using a data driven, consensus based approach, BI works in sites across the country to bring officials from law enforcement, legal systems and child welfare together with community leaders, parents and children to change policies, procedures and practices that result in the detention of low-offending youth of color and poor youth. In addition, through the Community Justice Network for Youth, BI supports local organizations to build their capacity to hold local juvenile justice systems accountable, reduce the overuse of detention, and promote the use of community alternatives to detention. The BI has worked in more than 40 jurisdictions nationally and achieved significant results in reducing racial and ethnic disparities.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of at-risk children, especially those in out-of-home confinement through the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. Many of the cases have involved the treatment of children in institutions. The Center has also provided research, training, and technical assistance on legal standards and policy issues for juvenile facilities to public officials in almost every State, and helped to

draft national standards for juvenile detention facilities for the Annie E. Casey Foundation's Juvenile Detention Alternative's Initiative. The Center's attorneys have participated as amicus curiae in cases in California and around the country involving important juvenile system issues. The Youth Law Center has had a long term commitment to protecting children in custody against practices that are humiliating and demeaning, as well as practices that are unnecessarily intrusive. This case, involving indiscriminate strip searches of low level juvenile arrestees, fits squarely within that commitment.

Youth, Rights, & Justice, Attorneys at Law (YRJ) is Oregon's leading champion for children and youth in the courtroom and the community. YRJ's attorneys are appointed by the juvenile court to represent approximately 1,700 children per year in delinquency, dependency, and termination of parental rights cases at the trial and appellate level. In addition to court-appointed representation, YRJ advocates for children in a variety of other ways. After identifying system-wide problems, YRJ works with partners throughout Oregon to implement policy-level solutions. YRJ provides information, individual class representation, administrative and legislative advocacy, technical assistance and training throughout the state. YRJ understands both the importance of a zealous advocate for children and youth and the importance of allowing children and youth access to the courts to cure state violations of their rights.