IN THE NEBRASKA SUPREME COURT

CASE NO. 03-1446

DOUGLAS COUNTY, NEBRASKA

Plaintiff, Appellee,

vs.

JOSUE and MARY ANAYA, husband and wife, as

PARENTS OF ROSA ARIEL ANAYA,

A minor child,

Defendants, Appellants.

BRIEF FOR AMICI CURIAE CHILDREN'S HEALTHCARE IS A LEGAL DUTY, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, AND NEBRASKA CHAPTER, AMERICAN ACADEMY OF PEDIATRICS

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ARGUMENT

The State of Nebraska has decided to put the welfare of children first. Many states allow some parents to deny their children the important benefit of metabolic screening, but the people of Nebraska have chosen to guarantee all children this benefit. This Court has no reason to take the bold step Appellants urge, of nullifying a considered judgment of the legislature that avoiding lifelong suffering or death is a sufficient justification for applying a simple, needle-prick test to all newborn children regardless of the religious beliefs some parents might have.

If constitutional arguments of the sort Appellants proffer were to succeed, not just metabolic screening but also numerous other state efforts to protect the welfare of children could be stymied by dissenting parents. Fortunately, those arguments do not accurately reflect the law today, which requires, at most, simply that the state show a real benefit to children and an effort to secure that benefit with minimal intrusion into family life. Appellants do not question the state legislature's determination that metabolic screening is generally beneficial. Rather, they take the position that parents have a right to deny their own children that benefit. For the Court to adopt this position would require ignoring established constitutional doctrine rather than applying it. It would also require disregarding the interests and rights of children, who themselves have no religious objection to being tested for metabolic disorders.

The Amici child welfare organizations demonstrate below that Appellants' constitutional objection to the Nebraska metabolic screening rests throughout on a misunderstanding and mischaracterization of existing Supreme Court doctrine; that the metabolic screening Nebraska guarantees all children is important to the welfare of children in the State; and that Rosa Anaya herself has a right that Appellants entirely ignore—namely, a right not to be denied a state-conferred health benefit for reasons that have nothing to do with her own interests or choices.

I. PARENTS HAVE NO CONSTITUTIONAL RIGHT TO ENDANGER THEIR CHILDREN'S HEALTH.

Contrary to the assertions of both Appellants and Appellee, the District Court did implicitly find that the state metabolic screening law burdened Appellants' parental rights. The District Court stated that if a state law infringes upon a fundamental constitutional right, then strict scrutiny is the appropriate standard of review (Order at 3), and then proceeded to apply strict scrutiny to this case (Order at 4-5). The District Court perceived a conflict between the parents' free exercise of religion and the state's effort to guard the health of children (Order at 4), but held that the state was justified in "limiting parental freedom" in this way (Order at 5). The court *could* have held simply that the law does not burden Appellants' free exercise of religion, because it pertains to the health of Rosa Anaya rather than to Appellants' religious activities, but it did not do so.

The District Court was also overly generous to Appellants in concluding that strict scrutiny is the proper standard of review in free exercise cases like this one, where the challenged state law is religiously neutral and generally applicable. The United States Supreme Court decision in Employment Division v. Smith, 494 U.S. 872 (1990), established a contrary rule, as Appellants acknowledge. In Smith, the Supreme Court held: "The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Id. at 879. After Smith, religiously neutral and generally applicable laws are subject only to rational basis review, under which a state must show just that a law serves some state interest reasonably well. Appellants do not contend that Nebraska's metabolic screening law, which is religiously neutral and generally applicable, would not pass rational basis review.

In addition, the Supreme Court has never held that parental rights to child-rearing freedom under the Due Process Clause of the Fourteenth Amendment trigger strict scrutiny. See Troxel v. Granville, 530 U.S. 57, 80 (2000) (Thomas, J., concurring) (noting that the other Justices who joined in the Court's plurality decision did not state that strict scrutiny applies in parental substantive due process cases). In the only decisions of the Court prior to Troxel involving just a substantive due process claim to freedom in childrearing, Meyer v. Nebraska, 262 U.S. 390 (1923), and Pierce v. Society of Sisters, 268 U.S. 510 (1925), the Court found that the challenged laws served no state interest, so they would not pass rational basis review. And in Wisconsin v. Yoder, 406 U.S. 205 (1972), a pre-Smith decision involving both a parental substantive due process claim and a free exercise claim, the Court implied that a substantive due process claim itself triggers only rational basis review, by stating that "when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required…" Id. at 233.

In the absence of authority for applying strict scrutiny on the basis of a free exercise claim or on the basis of a substantive due process claim, Appellants put forward the "hybrid rights" claim that is the last resort of every free exercise plaintiff seeking exemption from a clearly legitimate law. They contend that when a free exercise claim is joined with a parental substantive due process claim the standard of review is elevated to strict scrutiny. The only authority Appellants proffer for the viability of such a claim after Smith is language in the Smith opinion itself, which Appellants accord undue significance by stating that "[t]he Court in Smith noted that the compelling state interests standard still applies when a party's free exercise of religion claim is coupled with other constitutional protections, making a hybrid claim." (Appellants' Brief at 10).

In fact, there is only dictum in Smith suggesting that constitutional rights claims might have some additive effective; there was no hybrid claim recognized in Smith. 494 U.S. at 881-82. Such dictum does not amount to a statement or holding of "the Court." Rather, it constitutes simply the musings of one Justice and has no precedential value. Subsequent to Smith, "the Court" has never adopted the hybrid rights idea, and lower courts adjudicating free exercise cases have consistently rejected hybrid rights-based demands for strict scrutiny, in parents' rights cases and in other contexts. See, e.g., San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024 (9th Cir. 2004) (rights to free speech and assembly); Miller v. Reed, 176 F.3d 1202 (9th Cir. 1999) (right to travel); Swanson v. Guthrie Indep. Sch. Dist. No. I-L, 135 F.3d 694, 700 (10th Cir. 1998) (parents' rights); Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 539 (1st Cir. 1995) (parents' rights); Kissinger v. Board of Trustees, 5 F.3d 177, 180 (6th Cir. 1993) (rights to free speech and free press) ; American Friends Serv. Comm. Corp. v. Thornburgh, 961 F.2d 1405, 1408 (9th Cir. 1991) (substantive due process "right to employ"); Boone v. Boozman, 217 F.Supp.2d 938, 955 (E.D. Ark. 2002) (parents' rights). The Sixth Circuit, in explaining why it rejected the very idea of a higher standard of review for so-called "hybrid-rights claims," stated: "Such an outcome is completely illogical; therefore, at least until the Supreme Court holds that legal standards under the Free Exercise Clause vary depending on whether other constitutional rights are implicated, we will not use a stricter legal standard than that used in Smith to evaluate generally applicable, exceptionless state regulations under the Free Exercise Clause." Kissinger, 5 F.3rd at 180.

Appellants are correct that *prior* to Smith the Supreme Court applied some form of heightened review in free exercise cases, including those, like Yoder, involving parental religious objections to state child welfare laws. Notably, however, in no case has the United States Supreme Court ever held that parents have a right under the First or Fourteenth Amendment, or the two

amendments in combination, to an exemption from state laws that would benefit their children.

In Wisconsin v. Yoder, 406 U.S. 205 (1972), on which Appellants place great reliance, the Court rested its decision on a supposition that compelling Amish children to attend school beyond the eighth grade would not benefit them, and therefore recognizing a right of Amish parents to a partial exemption from the compulsory education laws would have no adverse effect on the children. 406 U.S. at 229-30. The Court stated: "This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred." 406 U.S. at 230. Importantly, the Court suggested that it would have reached an opposite decision if any danger to the children's interests were shown:

> To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under Prince if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. But in this case, the Amish have introduced persuasive evidence undermining the arguments the State has advanced to support its claims in terms of the welfare of the child and society as a whole. The record strongly indicates that accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society. 406 U.S. at 233-34.

Likewise, in Pierce v. Society of Sisters, 268 U.S. 510 (1925) and Meyer v. Nebraska, 262 U.S. 390 (1923), the Court held in favor of parents after finding that the state laws in question—a law effectively banning private schooling and a law banning instruction in a foreign language—did nothing to benefit children. See 268 U.S. at 534 (noting that nothing in the record indicated any educational deprivation of students at private schools), 262 U.S. at 403 (concluding that the prohibition on German language instruction was "arbitrary and without reasonable relation to any end within the competency of the state," because "there seems no adequate foundation for the suggestion that the purpose was to protect the child's health").

Importantly, in the two cases where the Supreme Court believed the challenged state laws *did* serve to protect the health interests of children, the Court held in favor of the state. In Prince v. Massachusetts, 321 U.S. 158 (1944), which remains the controlling Supreme Court precedent on conflicts between parental religious beliefs and state measures to protect children's health, the Court upheld a state law prohibiting parents from involving their children in distribution of leaflets on the streets after dark, against a claim that this law interfered with parents' free exercise of religion. Avoiding potential harm to children was all the justification the state needed to survive heightened judicial scrutiny in that case. Likewise, in Jehovah's Witnesses v. King County Hospital, 390 U.S. 598 (1968), the Court affirmed a lower court decision that applied Prince to order blood transfusions for a child needing surgery, over the free exercise objection of Jehovah's Witness parents.

Contrary to Appellants' suggestions (Appellants' Brief at 12), the Court in Prince did not rely principally on potential dangers to the general public in reaching its holding, and the Court did not say that parents might sometimes prevent the state from protecting children's health and welfare. After articulating the free exercise interests of parents, the Court stated:

> Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. 321 U.S. at 165.

The Court justified its holding by explaining: "Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control…," and "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare." 321 U.S. at 166-67. The Court was thus clearly focused primarily on the health and safety of children.

In suggesting that the Prince Court envisioned cases where parents might be entitled to deny their children meaningful legal protections, Appellants misquote the Court's opinion. In the indented quotation on page 12 of their initial Brief, Appellants omit three crucial words near the end of the sentence. The Court in fact said:

> Our ruling does not extend beyond the facts the case presents. We neither lay the foundation "for any [that is every] state intervention in the indoctrination and participation of children in religion" which may be done "in *the name of* their health or welfare" nor give warrant for "every limitation on their religious training and activities." 321 U.S. at 171.

The italicized words in this passage, which Appellants deleted in their brief, suggest a concern on the part of the Court that states would *claim* that their laws benefit children when in fact they do not. Appellants make no pretense that the metabolic screening law does not benefit children. Moreover, this passage is focused on religious education and religious activities that parents might undertake, to pass on their beliefs, while metabolic screening has no impact on Appellants' teaching of their children or involving of their children in religious activities.

As Appellants acknowledge, the Court in Prince referred specifically and favorably to state compulsory immunization laws, which require a preventive measure for children who are not presently manifesting disease or impairment. 321 U.S. at 166. Numerous lower court rulings since Prince have in fact upheld state immunization laws in the face of parental religious objections. See, e.g., Boone v. Boozman, 217 F.Supp.2d 938 (E.D. Ark. 2002); McCarthy v. Boozman, 212 F.Supp.2d 945 (W.D. Ark. 2002); Davis v. State, 451 A.2d 107 (Md. 1982); Brown v. Stone, 378 So.2d 218 (Miss. 1979); Anderson v. Georgia, 65 S.E.2d 848 (Ga. 1951); Wright v. DeWitt Sch. Dist., 385 S.W.2d 644 (Ark. 1965); Cude v. State, 377 S.W.2d 816 (Ark. 1964); Mosier v. Barren County Bd. of Health, 215 S.W.2d 967 (Ky. 1948); Sadlock v. Board of Education, 58 A.2d 218 (N.J. 1948). And in Smith, Justice Scalia favorably cited one of these decisions, in listing various kinds of general "civil obligations" from which he believed

individuals have no right to an exemption under the Free Exercise Clause. 494 U.S. at 888-89 (citing Cude v. State, 377 S.W.2d 816 (Ark. 1964).

In these and other cases, the Supreme Court and lower courts, including this Court, have consistently recognized that protecting the welfare of children is a compelling state interest, sufficient to justify even removing a child altogether from a parent's custody. See, e.g., Palmer v. Palmer, 249 Neb. 814, 820, 545 N.W.2d 751, 756 (1996) (referring to "the compelling end of the best interests of the child"); In re Interest of Metteer, 203 Neb. 515, 522, 279 N.W.2d 374, 378 (1979) (termination of parental rights). See also Sable Communications of California, Inc. v. F.C.C., 492 U.S. 115, 134 (1989) (prohibition on obscene interstate commercial telephone messages); Coy v. Iowa, 487 U.S. 1012, 1025 (1988) (O'Connor, J., concurring) (protection of child witnesses); Swipies v. Kofka, 348 F.3d 701, 703 (8th Cir. 2003) (removal of child from parental custody); Tower v. Leslie-Brown, 326 F.3d 290, 297 (1st Cir. 2003) (removal of abused children from home); Nicholson v. Scoppetta, 344 F.3d 154, 180 (2nd Cir. 2003) (removal of abused child from home); U.S. v. Moore, 215 F.3d 681, 686 (7th Cir. 2000) (prosecution for possession of child pornography); J.B. v. Washington County, 127 F.3d 919, 925 (10th Cir. 1997) (removal of abused child from home); Blair v. Supreme Court of State of Wyo., 671 F.2d 389, 390 (10th Cir. 1982) (termination of parental rights); Hobbs v. County of Westchester, 2003 WL 21919882, *6 (S.D.N.Y. 2003) (restrictions on activities of convicted sex offender); Klemka v. Nichols, 943 F.Supp. 470, 479 (M.D. Pa.1996) (mother arrested while in church for child endangerment); State of Fla., Dept. of Health and Rehabilitative Services v. Friends of Children, Inc., 653 F.Supp. 1221, 1227 (N.D. Fla.1986) (objection to home studies by adoption agency). Moreover, the evidence presented in the District Court established that there is today no reasonable alternative to a blood test for metabolic screening. The metabolic screening law would therefore have to be upheld even if strict scrutiny appropriately applied.

Appellants attempt to distinguish metabolic screening from immunization on the basis of how imminent the feared harm is. (Appellants' Brief at 13) But the distinction they would draw is illusory. Both measures guard against something that could cause a child to become ill, impaired, or dead. In fact, the danger of harm is arguably more imminent when it is inside a person's body already—as is the case with neonatal metabolic disorders—than when it is in the child's external environment. As discussed further in the next section, there is no questioning the imminence of the harm for children who are in fact born with PKU, biotinidase deficiency, galactosemia, or MCAD deficiency. Whether any given baby has in fact been born with one of these disorders can only be determined by administering the test. The low probability of any given baby having a metabolic disorder also cannot serve to distinguish metabolic screening from immunization, because some of the diseases for which children must be immunized are ones, such as polio, that any given U.S. child has almost no chance of ever contracting. And the usual consequences of many metabolic disorders are much more serious than the usual consequences of some illnesses against which children are typically immunized, such as chicken pox or measles.

Appellants rely illogically on the fact that most states include a religious exemption in their metabolic screening laws, as evidence that metabolic screening is actually not so important for children. It does not follow from the prevalence of exemptions that they are appropriate, let alone that they are constitutionally required. States decide not to do many things that they could do to protect people's welfare, especially when those they might protect are politically powerless and when there is a vocal group of people who want to deny that protection. Nebraska has instead decided to protect politically powerless children, even over the objection of some insistent parents. Appellants point to no explicit statements by any legislature or court that metabolic screening does not serve a compelling state interest or that metabolic screening does not guard

against imminent harm or that metabolic screening is less important than immunization.

Legislative history indicates that the Nebraska legislature has made a conscious and thoughtful decision to require metabolic screening without a religious exception. The test was first required in 1967 without a religious exemption. In 1979 a religious exemption was added, but the legislature removed it in 1983. In 2003 members of the Church of Scientology asked the legislature to allow a delay in metabolic screening because their religion teaches that babies should not have any procedures or hear any sounds for the first days of their life. LB714 was introduced to accommodate them, but it did not pass.

LB714 illustrates the Pandora's box that religious exemptions open. Scientologists want only a delay in metabolic testing while the Anayas want to be allowed to refuse the test completely. Other religions want an exemption from wearing bicycle helmets and in two states have gotten it. Penn. Stat. Title 75 §3510(b)(3); Ore. Rev. Stat. 814.487 The Christian Science church seeks religious exemptions from all medical care of children. Delaware has enacted a religious defense to first-degree murder, Arkansas has a religious defense to capital murder, and four other states have religious defenses to murder or manslaughter. Ark. Code 5-10-101(a)(9), Del. Code Title 11 § 1103(c) and 1104, Ia. Code 726.6(d), Ore. Rev. Stat. 163.206, 163.115(4), 163.118(b)(3); Ohio Rev. Code 2919.22A; W.V. Code 61-8D-2(d)

II. METABOLIC SCREENING IS AN IMPORTANT COMPONENT OF HEALTH CARE FOR ALL CHILDREN.

Amici's position is that screening of newborns should be required only when it meets the following conditions:

1. The disease detected by the screening has significant mortality and morbidity among children when not diagnosed pre-symptomatically
2. The disease is not consistently identified by symptoms in the neonatal period
3. The prevalence of the disease in the child population is significant
4. The baby can benefit from pre-symptomatic treatment

5. A simple, minimally invasive screening method that carries no reasonable risk of physical harm is available
6. The screening method is sensitive and specific
7. A reliable means for reporting results exists
8. The purpose of the screening is explained to the parents, and resources for treatment and counseling are available
9. The family's right to confidentiality is protected. See CHILD newsletter 2003 #1

Nebraska's metabolic screening law meets all of the above requirements. Medical treatment, often consisting simply of dietary manipulation or small doses of thyroid hormone, prevents the damage from the metabolic disorders detected by the test when it is initiated before symptoms appear. Without treatment, severe consequences result, including mental retardation, growth retardation, failure to thrive, liver disease, oxygen-carrying difficulties, and sudden infant death. See Richard E. Behrman, Robert Kliegman, Hall B. Jenson, eds. *Nelson Textbook of Pediatrics*, 17th ed. (Philadelphia: W. B. Saunders, 2004):397-8 and 399-518. For example, children born with the metabolic disorder phenylketonuria who do not receive treatment in time may become "hyperactive with purposeless movements, rhythmic rocking, and athetosis." Id. at 399.

Metabolic disorders typically do not manifest symptomatically in time for effective treatment. While a baby is *in utero*, a mother's metabolism corrects that of the baby, so the baby is born apparently normal even if it does carry a metabolic disorder. After birth, however, metabolic poisons accumulate, brain growth retards, and brain damage may ensue. Yet it might be years before the child's mental handicaps are observed. Id. at 398. Alternatively, enzymes which are deficient because of a metabolic disorder may function in the baby after birth, but at a low level. The baby will seem fine when unstressed, but even minor to moderate stress, such as from a cold, can cause major metabolic decompensation that leads to serious illness or even sudden death. Id.

The metabolic screening is therefore necessary to detect metabolic disorders in time to prevent permanent harm to the child. In addition, the screening is minimally invasive. Only a

few drops of blood are needed to test for all the diseases listed in Nebraska's law.

III. ROSA ANAYA HAS A CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF HER INTEREST IN AVOIDING PREVENTABLE METABOLIC DISORDERS.

What neither of the parties to this litigation has considered is that Rosa Anaya might herself have a right at stake in this matter. It is her health, after all, and the health of other children in a similar position in Nebraska, that is in question. The state's metabolic screening law is designed for their protection, and the ultimate issue in this case is whether they will receive the protection that the legislature decided to give them.

For this Court to empower Appellants to countermand the legislature and prevent Rosa from receiving the protection of the metabolic screening law would be effectively to treat her as less deserving than other children of the protections afforded by state child welfare laws. Such judicial action would constitute a *prima facie* violation of the Equal Protection Clause of the United States Constitution, which prohibits state actors from denying the protections of the law to particular citizens without strong justification. And there is no support in constitutional precedent for the proposition that someone else's wishes can supply such justification.

The Mississippi Supreme Court, in Brown v. Stone, 378 So.2d 218 (Miss. 1979), recognized that parental religious claims to exemption from child welfare laws—in that case, a compulsory immunization law—amount to a demand that the state deny certain children the equal protection of the law. "A child," wrote the Court, "is indeed himself an individual, although under certain disabilities until majority, with rights in his own person which must be respected and may be enforced." The Court further held that "innocent children, too young to decide for themselves" should not "be denied the protection against crippling and death that immunization provides because of [their parents'] religious belief" and struck down a religious

exemption in the State's compulsory immunization laws as a violation of the Fourteenth Amendment's guarantee of equal protection. 378 So.2d at 222.

Similarly, in State v. Miskimens, 490 N.E.2d 931 (Ohio Com. Pl. 1984), an Ohio court held that the religious defense in the State's felony child endangerment law violated the equal protection rights of children whose parents relied on it. The court stated:

> This special protection [of medical care] should be guaranteed to all such children until they have their own opportunity to make life's important religious decisions for themselves upon attainment of the age of reason. After all, given the opportunity when grown up, a child may someday choose to reject the most sincerely held of his parents' religious beliefs, just as the parents on trial here have apparently grown to reject some beliefs of their parents. Equal protection should not be denied to innocent babies, whether under the label of "religious freedom" or otherwise. 490 N.E.2d at 935-36

A newborn has no religious objection to a blood test. Mental retardation or death would rob Rosa Anaya of the opportunity to become an autonomous person, to make decisions for herself about religious belief and about the kind of life she will lead. The metabolic screening that Nebraska requires can prevent such a profound loss, and no one has a right to take that protection away from Rosa Anaya or from any other child.

CONCLUSION

This is not an exceptional case. Any aspect of any state's child welfare laws can conflict with some parents' religious beliefs, given the infinite variety of religious beliefs people can adopt. The Nebraska legislature has wisely refused to enact religious exemptions from civil and criminal child abuse and neglect laws and from its metabolic screening requirement. This Court should not establish a precedent that parents are entitled to an exemption from any child welfare laws to which they claim to have a religious objection.

Such a precedent would greatly complicate state efforts to promote the welfare of children. It would also result in suffering, disease, bodily damage, and death to some children. The

State of Nebraska unquestionably has a compelling interest in preventing mental retardation, other disabling conditions, and death of its children. It has acted to serve this interest by requiring metabolic screening since 1967, and the state legislature has made a considered judgment that a religious exemption would be contrary to this compelling interest. Parents have no legal or moral entitlement to override this legislative judgment or to subject any child to the danger of such harm. On the contrary, Rosa Anaya has a right not to be denied an important protection that other children receive.

The Amici child welfare organizations do not question the good intentions of parents like the Anayas, but no one's good intentions entitle them to deny other persons legal protections that the state has granted. Although Mr. and Mrs. Anaya might not appreciate it, laws like that mandating metabolic screening of children actually benefit parents as well—all parents—by increasing the likelihood that they can share with their children in a long and healthy life.

APPENDIX A: DESCRIPTION OF AMICI CURIAE

Children's Healthcare Is a Legal Duty (CHILD) is a tax-exempt educational organization with approximately 450 members in 42 states and four foreign countries. CHILD's mission is to stop religion-related child abuse and neglect. CHILD provides information to public officials, scholars, and others; supports research, publishes a newsletter, files lawsuits, files *amicus curiae* briefs, and does a limited amount of lobbying. Its officers and honorary members have won many awards for their child advocacy work, including the NACC Outstanding Legal Advocacy Award and Child Advocacy Service Awards by several chapters of the American Academy of Pediatrics. CHILD is a member of the National Child Abuse Coalition.

The **National Association of Counsel for Children (NACC)** is an IRC 501 (c) (3) not-for-profit child advocacy and professional membership association with approximately 2000

members representing all 50 states and the District of Columbia. The mission of the NACC is to improve outcomes for America's court-involved children. NACC programs include professional training and technical assistance, programs to establish the practice of law for children as a legal specialty, and policy advocacy. The NACC has appeared as *amicus curiae* in many state and federal appellate courts and the Supreme Court of the United States. The NACC enters a case only after a careful review process by the NACC *Amicus Curiae* Committee and its Board of Directors. The NACC is the recipient of the Meritorious Service to the Children of America Award presented by the National Council of Juvenile and Family Court Judges. NACC staff members have received the ABA National Child Advocacy Award and the Kempe Award. NACC programs have received the support of the U.S. Dept. of HHS Children's Bureau, the ABA, the American Academy of Pediatrics, and the Child Welfare League of America.

The **Nebraska Chapter, American Academy of Pediatrics** is a member-based, non-profit organization, composed of nearly three hundred, primary care and sub-specialist pediatricians. The mission of the Nebraska Chapter, American Academy of Pediatrics is to promote the physical, mental, and social health of all infants, children, adolescents, and young adults; to foster camaraderie and cooperation among pediatricians and pediatric subspecialists within the state for the advancement of the practice of pediatrics; to engage in child advocacy efforts, education, and service to improve the systems that serve and the policies that impact children; to further the policies and the objectives of the American Academy of Pediatrics at the state and local level.

IN THE NEBRASKA SUPREME COURT

DOUGLAS COUNTY, NEBRASKA,	)	CASE NO. A-03-1446
Plaintiff,	)	
vs.	)	AFFIDAVIT OF MAILING
	)	AND PROOF OF SERVICE
	)	
JOSUE and MARY ANAYA, husband	)	
and wife, as parents of ROSA ARIEL	)	
ANAYA, a minor child,	)	
Defendant	)	

After first being duly sworn under oath, affiant states that on December 1, 2004, he deposited in the United States mail, twelve copies of the foregoing *amicus curiae* brief to the Clerk of the Supreme Court/Court of Appeal of Nebraska, 2413 State Capitol Building, P. O. Box 98910, Lincoln, Nebraska, 68509, two copies to Brent Bloom, Chief Deputy County Attorney, Douglas County Attorney, 100 Hall of Justice, 1701 Farnam Street, Omaha NE 68183 and two copies to Amy L. Mattern, Whitner Law Firm, P.C., L.L.O., 1905 Harney Street, Suite 640, Omaha, Nebraska 68102

FURTHER AFFIANT SAYETH NOT.

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SUBSCRIBED, SWORN and acknowledged to before me on this 1st day of December, 2004.

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Notary Public