
Court of Appeals

STATE OF NEW YORK

██████ (ANONYMOUS),

—against—

Plaintiff-Appellant,

██████ (ANONYMOUS),

—and—

Respondent,

██████ (ANONYMOUS),

Non-Party Appellant.

**BRIEF OF DOMESTIC VIOLENCE LEGAL EMPOWERMENT
AND APPEALS PROJECT, AMERICAN PROFESSIONAL SOCIETY
ON THE ABUSE OF CHILDREN, BATTERED MOTHERS CUSTODY
CONFERENCE, BATTERED WOMEN'S JUSTICE PROJECT,
CALIFORNIA PROTECTIVE PARENTS ASSOCIATION, CENTER
FOR JUDICIAL EXCELLENCE, CHILD USA, JAYA L. CONNORS,
MARGARET B. DREW, HUMAN RIGHTS AT HOME CLINIC AT THE
UNIVERSITY OF MASSACHUSETTS SCHOOL OF LAW, FAMILY
VIOLENCE APPELLATE PROJECT, INSTITUTE ON VIOLENCE,
ABUSE AND TRAUMA, THE LEADERSHIP COUNCIL ON CHILD ABUSE
& INTERPERSONAL VIOLENCE, LEGAL MOMENTUM, NATIONAL
ASSOCIATION OF WOMEN LAWYERS, NATIONAL ORGANIZATION
FOR MEN AGAINST SEXISM, NEW YORK LEGAL ASSISTANCE
GROUP, SANCTUARY FOR FAMILIES, AND WOMEN'S LAW PROJECT
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

The American Professional Society on the Abuse of Children, Battered Women's Justice Project, California Protective Parents Association, CHILD USA, Center for Judicial Excellence, Domestic Violence Legal Empowerment Project, Family Violence Appellate Project, Institute on Violence, Abuse and Trauma, The Leadership Council on Child Abuse & Interpersonal Violence, Legal Momentum, National Association of Women Lawyers, National Organization for Men Against Sexism, New York Legal Assistance Group, Sanctuary for Families, and the Women's Law Project are non-profit entities without any parents, subsidiaries, or affiliates.

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STATEMENT OF INTEREST

The Domestic Violence Legal Empowerment and Appeals Project and other amici (collectively, the “Amici”)¹ respectfully submit this brief in support of the Motion for Leave to Appeal by Plaintiff-Appellant [REDACTED] (“Appellant”) from an order of the Appellate Division, Second Judicial Department, which affirmed the Supreme Court’s earlier decision to award full legal and primary physical custody of the parties’ child to his father. *See* Appellant’s Mot. for Leave to Appeal, Ex. A.²

Amici are composed of 19 organizations and individuals that represent, advocate for, and/or serve victims of family violence, including in the context of child custody proceedings. Collectively, Amici have been involved in hundreds of custody cases nationwide. Amici’s statements of interest are appended to this brief.

Amici support the Appellant’s Motion for Leave to Appeal, both out of concern for the parties’ now teen-aged son, and because this case is emblematic of how the theory of parental alienation (“PA” or “alienation theory”), which developed from the now-discredited “Parental Alienation Syndrome” (“PAS”), is used in family courts in New York and nationwide to the detriment of children and their nurturing, protective parents. Research has documented significant harm to

¹ No counsel for a party contributed content to or participated in the preparation of this brief, which has been prepared *pro bono* by Amici’s counsel with no monetary contributions from any other source.

² Amici adopt Appellant’s statement of the case.

children, including abuse and sometimes death, resulting from courts' reliance on alienation theory to reject claims that a parent is unsafe. As in this case, alienation is typically propounded by a mental health professional and often accepted uncritically, without application of admissibility standards for scientific evidence.

Amici's brief describes alienation theory's roots in PAS, the absence of any scientific support for its core premises, and its gendered and harmful applications in court, particularly, but not only, where mothers or children raise abuse claims against a father in custody litigation. Because PA is used to dismiss children's negative feelings toward a parent without objectively assessing the causes of those feelings, it is a conclusory and biased label that impedes courts' ability to discern children's best interests. This Court's review provides a critical opportunity for a state high court, on a well-developed record, to review the harmful uses of this theory, and to address appropriate constraints on its application.

ARGUMENT

I. PARENTAL ALIENATION LACKS SCIENTIFIC SUPPORT AND DEFINITION, MAKING ITS APPLICATION SUBJECTIVE, BIASED, AND VIRTUALLY IMPOSSIBLE TO REFUTE.

Parental alienation, while lacking a universal clinical or scientific definition,³ generally refers to the presumption that a child's fear or rejection of one parent (typically the non-custodial parent), stems from the malevolent

³ See *infra* pp. 6-8.

influence of the preferred (typically custodial) parent.⁴ The alienation hypothesis inherently relies on two flawed assumptions: (i) that children do not ordinarily fear or resist a non-custodial parent without manipulation by the other parent; and (ii) that a child's hostility toward or fear of the other parent can, in fact, be caused solely by the favored parent's negative influence (or "programming"), regardless of the child's own experience. There is little or no scientific support for either premise, and both derive from PAS, which has itself been roundly debunked by scientific and professional authorities.

A. Parental Alienation Syndrome Has Been Thoroughly Discredited.

The term "Parental Alienation Syndrome" was invented in the 1980s by Richard Gardner, a child psychiatrist. Based solely on his own experience, Gardner's self-published texts described PAS as a "syndrome" whereby vengeful mothers employed child sexual abuse allegations as a weapon to punish ex-husbands and ensure custody for themselves.⁵ He claimed that such mothers

⁴ Most alienation writers acknowledge that it is "alienation" only if the child's estrangement has no "legitimate" justification. See William Bernet et al., *An Objective Measure of Splitting in Parental Alienation: The Parental Acceptance-Rejection Questionnaire*, 63 J. Forensic Sci. 776, 776 (2018) ("Parental alienation is a mental condition in which children . . . ally strongly with one parent . . . and reject a relationship with the other parent . . . without legitimate justification."). However, as explained herein, neither the literature nor court practice meaningfully address such "legitimate justifications"; instead, they generally assume that estrangement from a father is illegitimate.

⁵ See, e.g., Richard A. Gardner, *The Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child Custody Disputes?*, 30 Am. J. Fam. Therapy 93, 106 (2002) [hereinafter Gardner, *Parental Alienation Syndrome vs. Parental Alienation*].

enlisted their children in a “campaign of denigration” and “vilification” of the father, that they often “brainwash[ed]” or “programm[ed]” the children into believing untrue claims of paternal abuse, and that the children also fabricated their own stories.⁶ Gardner based his theory on a variety of sexist notions, invoking the adage “hell hath no fury like a woman scorned” to explain why mothers would use their children to falsely malign their ex-partners.⁷ Despite its questionable origins, the PAS defense rapidly became common in custody litigation involving any type of abuse claim by mothers or children.⁸

Gardner’s work was largely self-published and lacked peer review.⁹ In fact, PAS lacks any empirical support – and considerable evidence contradicts it. The largest study of its kind found that only 12% of child abuse or neglect claims in child access or custody disputes were knowingly false; the primary fabricators

⁶ Richard A. Gardner, *True and False Accusations of Child Sex Abuse* 162, 193 (1992) [hereinafter Gardner, *True and False*]; Gardner, *Parental Alienation Syndrome vs. Parental Alienation*, *supra* note 5, at 94-95. Gardner also claimed that women were “gratified” vicariously” by imagining father-child sex. Richard A. Gardner, *Sex Abuse Hysteria: Salem Witch Trials Revisited* 25 (1991); *see also* Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* 126 (1992).

⁷ Richard A. Gardner, *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse* 86-87, 91-92 (1987) [hereinafter Gardner, *Differentiation*].

⁸ Carol Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 Fam. L. Q. 527, 527, 534, 536 (2001).

⁹ *Id.* at 535, 535 n.27; *see also* *People v. Fortin*, 184 Misc. 2d 10, 11 (Cty. Ct. 2000).

were *non-custodial* parents (typically fathers).¹⁰ Moreover, PAS is intrinsically conclusory: a child's estrangement from a parent (usually the father) is *assumed* to indicate parental alienation, regardless of children's own experiences with the disfavored parent.¹¹

For these reasons and many others, most credible scientific and professional authorities have roundly rejected PAS.¹² Leading researchers concur that the "scientific status of PAS, is, to be blunt, nil,"¹³ and it is widely considered "junk science."¹⁴ In 2018, the renamed "Parental Alienation Disorder" was definitively rejected by the American Psychiatric Association for inclusion in its authoritative diagnostic manual of mental disorders ("DSM-5").¹⁵

¹⁰ Niko Trocme & Nicolas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 Child Abuse & Neglect 1333, 1340-42 (2005).

¹¹ See, e.g., Gardner, *Differentiation*, *supra* note 7, at 109 (while stating that PAS is not applicable if abuse is true, advising that the "presence of the parental alienation syndrome" is indicative of a false abuse claim); *id.* at 119.

¹² Joan S. Meier, *Parental Alienation Syndrome and Parental Alienation: A Research Review*, VAWnet 5 (Sept. 20, 2013) [hereinafter Meier, *Parental Alienation Syndrome and Parental Alienation*], https://vawnet.org/sites/default/files/materials/files/2016-09/AR_PASUpdate.pdf (listing authorities).

¹³ Robert E. Emery et al., *A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System*, 6 Psychol. Sci. Pub. Int. 1, 10 (2005).

¹⁴ See generally Rebecca M. Thomas & James T. Richardson, *Parental Alienation Syndrome: 30 Years On and Still Junk Science*, 54 Judges' J. 22 (2017).

¹⁵ See John M. Grohol, *Parental Alienation: Disorder or Not?*, PsychCentral (July 8, 2018), <https://psychcentral.com/blog/parental-alienation-disorder-or-not> (noting that "[p]arental alienation disorder is not a recognized mental disorder, and it's unlikely to appear in any form in the new DSM-5 coming out next year"); see also P. Bensussan, *Alienation parentale, abus psychologique de l'enfant et DSM-5* [*Parental Alienation, Child Psychological Abuse and DSM-5*], 43 L'Encéphale 510, 511 (2017). Published by the American Psychiatric

Likewise, despite an early embrace of PAS by some trial courts, to Amici's knowledge, every court to directly address the admissibility of PAS has found it inadmissible as invalid science, with New York leading the way.¹⁶

B. Parental Alienation Theory, As Applied, Is No More Scientific Than PAS.

As PAS became increasingly rejected, some forensic psychologists and others adopted a reformulation, commonly referred to as “parental alienation” or “alienation.”¹⁷ PA, in theory, rejects PAS' focus on blaming the preferred parent, and recognizes that children may become estranged from a parent for their own understandable reasons.¹⁸ While some alienation researchers distinguish “parental alienation” from PAS, conceding the latter is unscientific,¹⁹ other proponents use

Association, the DSM is the mental health profession's most well-respected and widely used diagnostic manual.

¹⁶ See, e.g., *Fortin*, 184 Misc. 2d 10, 14 (Cty. Ct. 2000), *aff'd*, 289 A.D.2d 590, 591 (2d Dep't 2001); *M.A. v. A.I.*, No. FM-20-973-09, 2014 WL 7010813, at *5 (N.J. Super. Ct. App. Div. Dec. 15, 2014) (unpublished), *certif. denied*, 112 A.3d 592 (N.J. 2015); *D.M.S. v. I.D.S.*, 225 So. 3d 1127, 1138-39 (La. Ct. App. 2015); *People v. Sullivan*, Nos. H023715, H025386, 2003 WL 1785921, at *13-14 (Cal. Ct. App. Apr. 3, 2003) (unpublished); see also *People v. Loomis*, 172 Misc. 2d 265, 266-69 (Cty. Ct. 1997); *Mastrangelo v. Mastrangelo*, 55 Conn. L. Rptr. 245 (Super. Ct. 2012) (unpublished); *Snyder v. Cedar*, No. NNHCV010454296, 2006 WL 539130, at *9 (Conn. Super. Ct. Feb. 16, 2006) (unpublished). Unpublished legal authorities are included in Addendum. Citations are based on a survey of accessible opinions.

¹⁷ In Amici's experience, other terms (e.g., “gatekeeping,” “contact resistance,” etc.) are used for essentially the same concepts. The arguments in this brief pertain to the analytical ideas, regardless of the terminology.

¹⁸ See, e.g., Joan B. Kelly & Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 Fam. Ct. Rev. 249, 251 (2004) [hereinafter Kelly & Johnston, *The Alienated Child*].

¹⁹ Janet R. Johnston & Joan B. Kelly, *Rejoinder to Gardner's "Commentary on Kelly and Johnston's 'The Alienated Child: A Reformulation of Parental Alienation Syndrome'"*, 42 Fam. Ct. Rev. 622, 622-23 (2004).

PAS, PA, and related terms essentially synonymously.²⁰

In practice, however, there is no real difference. Thus, the National Association of Juvenile and Family Court Judges warns custody courts:

The discredited “diagnosis” of “PAS” (*or allegation of “parental alienation”*), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be “alienated” have no grounding in reality. It also diverts attention away from the behaviors of the [disliked] parent, who may have directly influenced the children’s responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children’s other parent.²¹

The widespread conflation of PA and PAS raises the question as to whether and why “parental alienation” should be considered any more scientific than PAS. But apart from the scientific and legal consensus against PAS, alienation theory writ large also lacks scientific basis:

First, there remains no scientific “consensus on the definitions of alienation,”²² a term which is used both to describe a child’s (presumably

²⁰ William Bernet, *Parental Alienation: Misinformation Versus Fact*, 54 Judges’ J. 23, 25 (2015) (describing the two concepts as “almost synonymous”); Sheila Pursglove, *Asked & Answered: Demosthenes Lorandos on Parental Alienation Syndrome (PAS)*, Oakland County Legal News (Jan. 6, 2015), <http://www.legalnews.com/oakland/1399575> (discussing PAS and PA interchangeably); Meier, *Parental Alienation Syndrome and Parental Alienation*, *supra* note 12, at 8 (describing a case in which the evaluator seamlessly changed labels from PAS to PA without altering the analysis).

²¹ Clare Dalton et al., *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide*, Nat’l Council of Juvenile & Family Court Judges 24 (2006) (emphasis added).

²² Michael Saini et al., *Empirical Studies of Alienation, in Parenting Plan Evaluations: Applied Research for Family Court* 374, 374 (Leslie Drozd et al. eds., 2d ed. 2016); *see also* Holly

irrational) state of mind, and a parent's (presumably improper) actions. Even courts applying the label in custody litigation typically fail to define it, resulting in its applicability against any parent favored by a child, regardless of the circumstances.²³

In addition, alienation theory embodies three unsupported beliefs: (i) that alienation can reliably be “diagnosed” and distinguished from – or disproved based on – other “legitimate” causes of a child's estrangement; (ii) that a favored parent's denigration or fear – either conscious or unconscious – can itself lead to a child's estrangement from the other parent; and (iii) that the harm of alienation is long-term and severe (thus warranting extreme measures, like custody removal, to prevent it). Each of these premises lacks adequate scientific foundation, as is recognized by leading alienation scholars themselves.

1. In Theory and Practice, Alienation Labels Are Conclusory and Used to Blame Caring Parents While Ignoring Legitimate Causes of Children's Estrangement.

Proponents of both PAS and alienation theory acknowledge to varying degrees that a history of family violence, which could itself explain a child's

Smith, *Parental Alienation Syndrome: Fact or Fiction? The Problem With Its Use in Child Custody Cases*, 11 U. Mass. L. Rev. 64, 86 (2016).

²³ For instance, Amici have seen alienation “diagnosed” by a leading alienation proponent against a father who lived across the country, when the teen daughter was angry at the mother *with whom she lived*, because the mother was punitive toward the teen and unsupportive of her love for her father. Cf. Suzanne Zaccour, *Parental Alienation in Quebec Custody Litigation*, 59 Les Cahiers de Droit 1073, 1087, 1093-94 (2018) (judges rarely define alienation, and often find alienation even when children are not opposed to contact).

estrangement, should preclude an alienation claim.²⁴ Most alienation theorists acknowledge that if a child is estranged for “legitimate” reasons, it is not “alienation.”²⁵ Importantly, despite assertions by some proponents that there is ample science supporting PA,²⁶ objective reviews of the research have emphatically concluded that the literature fails to analyze and distinguish between different causes of a child’s estrangement:

Until there are scientifically valid studies using independent measures of parenting quality that can distinguish between children who rationally and irrationally reject a parent, PA advocates cannot claim scientific support for identifying alienated children.²⁷

²⁴ See Gardner, *Parental Alienation Syndrome vs. Parental Alienation*, *supra* note 5, at 95; Leslie M. Drozd & Nancy Williams Olesen, *Is it Abuse, Alienation, and/or Estrangement? A Decision Tree*, 1 J. Child Custody 65, 94 (2004) (“Alienating behaviors or alienation may exist only in cases where there is no abuse.”).

²⁵ See Bernet et al., *supra* note 4, at 776. Amici have seen alienation used to deny many legitimate reasons children may fear or dislike a parent, including harsh parenting, developmental changes, personality clashes, anger about the parental break-up, a parent’s lies or refusals to acknowledge their own past behavior, or even resentment of a new partner or baby.

²⁶ See, e.g., M. Brianna Pepiton et al., *Is Parental Alienation Disorder a Valid Concept? Not According to Scientific Evidence. A Review of Parental Alienation, DSM-5 and ICD-11 by William Bernet*, 21 J. Child Sexual Abuse 244, 248, 252 (2012) (critiquing claims by leading PA advocate Bernet that “Parental Alienation Disorder” (“PAD”) is scientifically supported, noting that Bernet’s book fails to acknowledge that abuse must be ruled out and is largely informed by a selection of stories, movies, television shows and non-peer-reviewed books and articles, including cites to only two studies, both dissertations, neither of which proves PAD).

²⁷ Madelyn Simring Milchman, *Commentary on “Parental Alienation Syndrome/Parental Alienation Disorder” (PAS/PAD): A Critique of a “Disorder” Frequently Used to Discount Allegations of Interpersonal Violence and Abuse in Child Custody Cases*, APSAC Advisor (forthcoming May 2019) (stating that alienation “advocacy” does not distinguish between the reasons a child may be estranged). A growing number of “objective” experts not associated with abuse experts or alienation proponents are highlighting the lack of scientific validity of alienation theory. See, e.g., Jenna Rowen & Robert Emery, *Parental Denigration: A Form of Conflict that Typically Backfires*, 56 Fam. Ct. Rev. 258, 259 (2018); Jean Mercer, *Are*

More fundamentally, if alienation cannot be *disproved* in a given case, because the label sticks whenever a child has a parental preference,²⁸ and other causes of estrangement are not considered, it fails the most fundamental prerequisite of the scientific method: falsifiability.²⁹

In fact, credible research and leading alienation experts have concluded that a child's estrangement is the product of multiple factors, *almost always including the estranged parent's own behaviors*.³⁰ Despite this growing recognition, most studies – and evaluators – tend to *presume* that estranged children are “alienated” children,³¹ revealing the same circularity and presumption plaguing PAS. Even a recent paper touting its new method for “measuring” alienation fails to differentiate

Intensive Parental Alienation Treatments Effective and Safe for Children and Adolescents?, J. Child Custody 37 (Jan. 21, 2019), <https://doi.org/10.1080/15379418.2018.1557578>; Madelyn Simring Milchman, *How Far Has Parental Alienation Research Progressed Towards Achieving Scientific Validity?*, J. Child Custody (forthcoming 2019).

²⁸ See *supra* note 23.

²⁹ See *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 593 (1993) (falsifiability is the first test of the admissibility of a theory as evidence); Madelyn Simring Milchman, *Misogynistic Cultural Argument in Parental Alienation Versus Child Sex Abuse Cases*, 14 Child Custody Decisions & Evaluations 211, 221 (2017) (falsifiability is the *sine qua non* of science).

³⁰ See Janet R. Johnston et al., *Is It Alienating Parenting, Role Reversal, or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes*, 5 J. Emotional Abuse 191, 206 (2005) [hereinafter Johnston et al., *Is It Alienating*] (recognizing “a multi-factor explanation of children's rejection of a parent after divorce”); Drozd & Olesen, *supra* note 24, at 67, 73-85 (describing multiple reasons a child may be estranged or less close with one parent, including poor parenting, absence, as well as abuse).

³¹ See Saini et al., *supra* note 22, at 417-18.

between causes of children's estrangement, instead presuming alienation.³² In fact, in-depth research and Amici's experiences suggest that evaluators and others who use the alienation label are often driven by their own biases and predispositions rather than objective facts.³³ Indeed, consistent with PAS, there is frequently a tone of blame and denigration of the preferred parent in such opinions.³⁴

Notably, a comprehensive and credible survey of the scientific research supporting alienation by leading researchers and scholars found:

There is a virtual absence of empirical studies on the differential diagnosis of alienation in children from other conditions that share similar features with parental alienation, especially realistic estrangement or justified rejection in response to parental abuse/neglect, significantly compromised parenting or the child being a witness to intimate partner violence.³⁵

³² See Gena A. Rowlands, *Parental Alienation: A Measurement Tool*, J. Divorce & Remarriage 4-6 (Nov. 22, 2018), <https://doi.org/10.1080/10502556.2018.1546031>.

³³ See Daniel G. Saunders et al., *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, Final Technical Report Submitted to the National Institute of Justice, Dep't of Justice 11-12 (Oct. 31, 2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>; Jaya L. Connors, *Advocating for Child Clients in Custody Cases Involving Parental Alienation Issues*, 28 Widener Commonwealth L. Rev. 5, 10, 8-20 (2019) (both attorneys for children and expert evaluators' opinions are often driven by their own biases); *Montoya v. Davis*, 156 A.D.3d 132, 136 (3d Dep't 2017) (describing evaluator's "pervasive and manifest bias against the mother").

³⁴ This is evident in the case at bar. See R. 25 (describing appellant's "clawing" presence); R. 20 (she "seemed to exalt" in response to her child's diagnosis of post-traumatic stress disorder); R. 19 (appellant used custody as a "weapon" against the father); R. 22 (appellant "regaled" professionals with "stories of [father's] purported untoward and abusive behavior . . . that [she] did not actually believe," for "the evident purpose of poisoning the psychological well").

³⁵ Saini et al., *supra* note 22, at 423; see also *id.* at 417-18 ("Although the majority of the researchers purport to exclude from their studies cases where abuse of the child had

This comprehensive survey found that alienation studies tend to be small, “methodologically weak,” non-random, not generalizable, and based on unreliable applications of the label.³⁶

Without a universal, valid definition and an objective means of distinguishing children who are “legitimately” estranged from those who are not, alienation is merely a conclusory label – and a weapon for parents in court. This is unsurprising given that alienation was not invented for treatment, but for use in custody litigation.³⁷

2. There Is Little, If Any, Scientific Support for the Belief That One Parent Can Turn a Child Against the Other, Consciously or Unconsciously, Without Legitimate Reason.

Amici are not suggesting that parents never engage in behavior that denigrates – or seeks to turn a child against – the other parent, nor that such behavior is unharmful. However, alienation theory’s causal claim – that one parent’s efforts can, by themselves, turn a child against the other parent – lacks scientific support and is likely wrong.

occurred, few have reported working definitions of child abuse and systematic methods for identifying and excluding these from their samples.”).

³⁶ *Id.* at 374-76, 419, 423.

³⁷ See Alison M. Nichols, *Toward a Child-Centered Approach To Evaluating Claims Of Alienation In High-Conflict Custody Disputes*, 112 Mich. L. Rev. 663, 664 (2014) (Gardner invented PAS “to describe the breakdown of a parent–child relationship during high-conflict custody disputes” (citation omitted)).

a. Conscious Denigration

Credible new research actually disproves the causation theory. In two studies aimed at testing alienation's causation assumption in young adults who experienced divorce as children, leading family court researcher Robert Emery and a colleague found "no support for the alienation hypothesis." Rather, they found "the opposite" to be true: parental denigration of the other parent usually "backfires" by undermining the child's relationship with the *denigrating* – not the *denigrated* – parent.³⁸

Similarly, in leading researchers' studies of alienation in high-conflict, custody-disputing families, despite parents' consistent maligning of one another, only 20-25% of the children were rated as having mostly negative attitudes towards either parent, and only a very small minority (5-10%) were found to hold negative attitudes that were extreme, entrenched, and unjustified.³⁹ Most significantly, these studies consistently found that children's rejection of a parent was correlated with multiple factors, including the disfavored parent's *own conduct*.⁴⁰

³⁸ Rowen & Emery, *supra* note 27, at 262 (finding that denigration "boomerang[s]," i.e., children come to dislike the denigrating parent more than the denigrated parent).

³⁹ See, e.g., Janet R. Johnston, *Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce*, 31 J. Am. Acad. Psych. & L. 158, 164 (2003); Johnston et al., *Is It Alienating*, *supra* note 30, at 201 (2005).

⁴⁰ See, e.g., Johnston et al., *Is It Alienating*, *supra* note 30, at 206-07.

In short, multiple credible studies cast doubt on the causal hypothesis underlying alienation theory. Instead, they suggest that when children turn against a parent it is usually in response, at least in part, to that parent's own behavior, as well as other developmental factors.

b. Unconscious Alienation

In many cases, like this one, evaluators and courts cannot identify a favored parent's conscious behaviors or words that (theoretically) undermine the child's view of the other parent. Alienation may then be claimed to operate *unconsciously* (here, "subliminal[ly]"⁴¹), often due to the mother's supposed mental disorder.⁴² For instance, Amici have handled multiple cases in which courts did not find that the mothers fabricated or coached their children's reports of the fathers' sexual abuse, yet concluded that their anxiety, hatred, or fear of the fathers accounted for the children's reports instead.⁴³

To Amici's knowledge, there is absolutely no scientific basis for the idea that a favored parent's anxiety, hatred, or fear can unintentionally cause a child to

⁴¹ Appellant's Mot. for Leave to Appeal at 23.

⁴² See, e.g., Kelly & Johnston, *The Alienated Child*, *supra* note 18, at 257 (while rejecting PAS, nonetheless asserting that a parent can "unconsciously" denigrate the other parent to the child "as a consequence of their own deep psychological issues" which cause them to "harbor deep distrust and fear of the ex-spouse"). Regarding the gender bias associated with this theory, see *infra* note 52.

⁴³ See, e.g., Amended Order of Custody & Child Support at 47-49, *Grier v. Blount*, No. 2011 DRB 0968 (D.C. Super. Ct. Dec. 11, 2017); Order at 12, 15, *Ferguson v. Wilkins*, No. DR-757-01, IF 2261-02 (D.C. Super. Ct. Dec. 15, 2005), *rev'd*; Brief of Appellant at 18-20, *Jordan v. Jordan*, 14 A.3d. 1136 (D.C. Ct. App. 2011) (Nos. 09-FM-1152, 09-FM-1337, 10-FM-375).

unconsciously fabricate abuse claims, nor, in our experience, have evaluators or courts relying on this theory ever cited any such support.⁴⁴ Rather, scientific research has found that inducing a child to believe false information, including false abuse claims, is difficult, and requires the “dogged persistence of coercive interviewers.”⁴⁵ Pathologizing children and mothers who report abuse is best understood as a relic of PAS.⁴⁶

Fundamentally, speculation about unconscious alienation is the ultimate non-falsifiable hypothesis. Whatever a mother has or has not done, she can be accused of unconsciously (or subliminally) turning her child against the father.⁴⁷ With an invisible cause, there can be no disproof.

⁴⁴ Similarly, in the case at bar, the evaluator was unable to invoke any scientific support for his conclusion that this mother has “subliminal[ly]” alienated her son. *See* Appellant’s Mot. for Leave to Appeal at 23. In fact, the DSM-5 limits the definition of psychological child abuse to “*non-accidental* verbal or symbolic acts by a child’s parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 719 (5th ed. 2013) (emphasis added).

⁴⁵ Thomas D. Lyon, *Let’s Not Exaggerate the Suggestibility of Children*, 28 Ct. Rev. 12, 14 (2001); *see also* Miguel Clemente & Dolores Padilla-Racero, *When Courts Accept What Science Rejects: Custody Issues Concerning the Alleged “Parental Alienation Syndrome”*, 13 J. Child Custody 126, 131-32 (2016) (“[c]hildren do not lie about abuse” and “are not easily manipulated”).

⁴⁶ *See* Gardner, *Sex Abuse Hysteria*, *supra* note 6, at 92 (invoking PAS to blame mothers for alienation even when they explicitly encourage their children to see their father); Clemente & Padilla-Racero, *supra* note 45, at 129-30.

⁴⁷ One survey of alienation cases found that while courts discussed *intentionally* alienating behaviors by both mothers and fathers, *unconscious or inadvertent* alienation was discussed only in relation to mothers. Zaccour, *supra* note 23, at 1092. Pathologizing women who report abuse has a long history. *See* Alison Espach, *What It Really Means When You Call a Woman “Hysterical”*, Vogue (March 10, 2017), <https://www.vogue.com/article/trump-women-hysteria-and-history> (describing the use of “hysteria” and similar labels to silence

3. There is no Scientific Support for the Idea That Alienation Causes Long-Term, Severe Harm for the Child.

Finally, there is no scientific support for the belief that, if a child is deemed “alienated,” this predicts drastic long-term negative effects for that child. The comprehensive review of relevant research by Saini et al. concluded that long-term effects were “inconclusive,” and that most studies involved self-identified victims of alienation without control groups or objective measures.⁴⁸ One small longitudinal study actually contradicted the hypothesis that alienation causes particular harm, finding that young “non-alienated” adults who had been the subject of custody disputes scored similarly on a scale of emotional distress and attachment insecurity to their “alienated” counterparts.⁴⁹ Similarly, Judith Wallerstein, the first to coin the term “alienation” and to note parent-child “alliances” during divorce, found after follow-up that all the children who had been alienated at divorce reconnected with the disfavored parent, most within one or two years.⁵⁰

and discredit women through time); Deborah Epstein & Lisa Goodman, *Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women*, 167 U. Penn. L. Rev. (forthcoming) (manuscript at 31-32), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3055&context=facpub>.

⁴⁸ Saini, et al., *supra* note 22, at 420.

⁴⁹ *Id.* (citing Janet R. Johnston & Judith Roth Goldman, *Outcomes of Family Counseling Interventions with Children Who Resist Visitation: An Addendum to Friedlander and Walters*, 48 Fam. Ct. Rev. 112 (2010)). The reviewers characterized the study as “unreliable” due to its small size. *Id.*

⁵⁰ Judith Wallerstein et al., *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* 116 (2000).

In short, the draconian “remedy” frequently employed for supposed alienation – that is, the removal of a child from the parent to whom they are bonded and on whom they depend – is likely a cure worse than the disease.⁵¹

II. PARENTAL ALIENATION’S APPLICATION IN CUSTODY LITIGATION CAUSES SIGNIFICANT HARM TO CHILDREN.

Use of alienation theory in custody litigation often leads to one or more of three types of harm to children: (i) dismissing or minimizing abuse claims against the disfavored parent, resulting in children’s exposure to ongoing abuse; (ii) subjecting children to other forms of destructive parenting; and/or (iii) inflicting attachment trauma on children by stripping them from their primary caregiver.

A. Courts’ Improper Reliance on Alienation Theory Subjects Children to Ongoing Abuse.

Alienation has gained its primary power and traction from its invention (as PAS) and use to deny abuse claims by mothers (and children) against fathers.⁵²

⁵¹ See Janet R. Johnston, *Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child*, 38 Fam. L. Q. 757, 771-72 (2005); *infra* Section II(C).

⁵² This has been documented specifically in New York. See Madelyn Simring Milchman, *Misogyny in New York Custody Decisions with Parental Alienation and Child Sexual Abuse Allegations*, 14 J. Child Custody 234, 237 (2017) [hereinafter Milchman, *Misogyny in New York Custody Decisions*] (surveying 24 appellate decisions involving child sexual abuse claims by mothers and alienation cross-claims by fathers, 22 of which were mothers’ appeals, and noting that gender-biased presuppositions and alienation claims fueled decisions to disbelieve child sexual abuse in those cases); see also Smith, *supra* note 22, at 84 (explaining that fathers assert PAS “much like an affirmative defense to disclaim a mother’s allegation [of abuse]” (citation omitted)); Simon Lapierre & Isabel Côté, *Abused Women and the Threat of Parental Alienation: Shelter Workers’ Perspectives*, 65 Child. & Youth Servs. Rev. 120, 125 (2016) (parental alienation is a “strategy . . . to overshadow male’s violence against women and children in society” (citation omitted)).

Despite scholars' acknowledgment that family abuse precludes the alienation "diagnosis,"⁵³ alienation is, like PAS, routinely used to *per se* discredit abuse claims.⁵⁴ Even where family violence is known, alienation claims can negate its importance.⁵⁵

A growing body of empirical research is confirming anecdotal evidence of the harmful impact and role of gender bias in custody cases involving abuse. A leading study analyzed "turned-around cases," where a court initially rejected safety concerns, but after recognition of subsequent harm to the children, another court protected them. PA labelling was responsible for 37% of the harmful outcomes; and when pathologizing of mothers' protective efforts is present, the percentage becomes 66%.⁵⁶

⁵³ Drozd & Olesen *supra* note 24, at 76 ("[Alienating behavior] is not related to child abuse, domestic violence, or substance abuse.").

⁵⁴ See, e.g., Milchman, *Misogyny in New York Custody Decisions*, *supra* note 52, at 234 (finding courts awarded custody based upon alienation claims used to refute allegations of child sexual abuse); Joan S. Meier, *Getting Real About Abuse and Alienation: A Critique of Drozd and Olesen's Decision Tree*, 7 J. Child Custody 219, 228-29 (2010) [hereinafter Meier, *Getting Real*] (discussing five cases in which alienation was used to deny credible abuse claims).

⁵⁵ See e.g., *Jordan v. Jordan*, 14 A.3d 1136, 1143 (D.C. Ct. App. 2011) (alienation finding supported joint custody award despite findings of past partner violence); Joan S. Meier & S. Dickson, *Mapping Gender: Shedding Empirical Light on Family Court Cases Involving Abuse and Alienation*, 35 J.L. & Inequality 311, 328 (2017) (showing that in all surveyed cases where abuse was validated *and* alienation was credited, the known abuser prevailed).

⁵⁶ Joyanna Silberg et al., *Crisis in Family Court: Lessons From Turned Around Cases*, Final Report to the Office of Violence Against Women, Dep't of Justice 37 (Sept. 30, 2013), <http://www.protectiveparents.com/crisis-fam-court-lessons-turned-around-cases.pdf>.

A separate pilot study of 238 published custody opinions analyzed outcomes in cases involving abuse and alienation claims. It found that when mothers claimed paternal abuse (of child or mother), but courts accepted fathers' alienation defense, the courts removed custody from 69% of the mothers.⁵⁷ Even where courts found that fathers committed child or adult abuse, if the mother was considered to be an "alienator," the father won the case.⁵⁸ That is, alienation findings trumped abuse claims even where abuse had been proven.⁵⁹

The impact of such custody decisions on children is severe. In 59% of the "turned-around" cases, the child was removed from the mother and ordered into the sole custody of the alleged abuser.⁶⁰ Children spent an average of three years in the abusive parent's custody before another court believed them and the decision was reversed. Court records showed the children's deteriorating mental and physical conditions, including anxiety, depression, dissociation, post-traumatic stress disorder, self-harming, and suicidality. Thirty-three percent of these children became suicidal; some ran away.⁶¹ Even more horrifying, a growing population of

⁵⁷ Meier & Dickson, *supra* note 55, at 331.

⁵⁸ *Id.* at 330.

⁵⁹ *Id.* Findings from the pilot study have been expanded and deepened in a federally funded five-year study; the currently unpublished results and data, on file with Amici, are consistent.

⁶⁰ Silberg et al., *supra* note 56, at 36.

⁶¹ *Id.* at Table 12.

cases is being documented in which courts refused to restrict child access to a reportedly dangerous parent, and that parent then killed the child.⁶²

B. As this Case Suggests, Courts' Improper Reliance on Alienation Theory Can Subject Children to Psychologically Injurious Parenting.

Alienation labels can do significant harm even apart from physical abuse. In Amici's experience, in order to wholly blame one parent, courts disregard the other's destructive behaviors which may have caused the child's distress.⁶³ In the case at bar, the alienation label appears to have led the court to ignore the child's terror in relation to his father, and the father's own serious parenting deficits.⁶⁴

⁶² R. Dianne Bartlow, *Judicial Response to Court-Assisted Child Murders*, 10 Fam. & Intimate Partner Violence Q. 7, 8 (2017) (referring to "documented news stories about 175 children who were murdered in a recent two-year period by abusive fathers involved in contested custody cases" and describing a survey of judicial officers in 21 states from courts where this occurred); see also Ctr. For Judicial Excellence, *US Divorce Child Murder Data* (last visited Mar. 18, 2019), <http://www.centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data> (linking to data demonstrating that out of a database of over 650 children killed by a parent, in at least 69 cases, courts "knowingly placed a child in contact with a dangerous parent" over the objection of a protective parent, resulting in 89 child homicides).

⁶³ In one of Amici's cases, a court first separated siblings, and then switched custody of both to the disliked father – despite the court's own finding that the father was "more likely to lose his temper than most people" and that he used "temper and intimidation to impose his will." Brief of Appellant, *supra* note 43, at 11.

⁶⁴ See, e.g., A. 6447-54 (describing the child's fear, anxiety, and sleep disturbances, including nightmares); R. 3244-47. One prior judge expressed serious concerns about the father's parenting, noting that he "seemed to lack appropriate respect for or understanding of the child's stages of emotional and social development, insisting instead upon standards of behavior clearly beyond the developmental level of the child." A. 6482. Even the ultimate evaluator, Dr. [REDACTED], in his first report recommending that Appellant retain custody, described the father as "very angry" and suggested court-ordered therapy may be the only way to get him engaged with his child. R. 936; A. 6472. The child's therapist, Dr. [REDACTED] found the father to be "angry," "hostile," and "not empathic with the child." R. 958; A. 6469.

Notably, the court refused to hear significant evidence explaining why the child fears his father, including his exposure to his father's violence toward his mother.⁶⁵

The result of the alienation frame here was to ignore the child's obvious extreme distress – and the father's behaviors fueling that distress – and to blame the conflict entirely on the mother.⁶⁶ The record suggests that the child has suffered enormously, having difficulty at school and experiencing severe emotional distress, possibly becoming suicidal.⁶⁷ He was diagnosed with post-traumatic distress disorder by one of his psychiatrists.⁶⁸

C. Courts' Improper Reliance on Alienation Theory Subjects Children to Attachment Trauma or Worse.

Alienation theory also harms children when it causes a court to remove them from the parent they trust and feel loved by (the "attachment parent"). There is

⁶⁵ See R. 2788-97; A. 6447. It appears that supervised visits, which went relatively well, were seen by the evaluator and judge as proof that there was no problem with the father's parenting. R. 25, 29-30. However, it is well-documented that destructive or abusive parents often perform well under observation. Lundy Bancroft et al., *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 41 (2d ed. 2011). Similarly, it is well-documented that children often express affection and appear not to show fear for their abuser. Marilyn McDonald, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, 35 Ct. Rev., Spring 1998, at 12, 17. As likely happened in this case, courts and evaluators often mistakenly assume that parents' performance when supervised is representative of their behavior at home.

⁶⁶ See R. 14, 19. Maryland's high court recently reversed lower court findings with a striking resemblance to this court's harsh criticism of the mother's search for mental health assistance for her distressed son. R. 10-11; *McClanahan v. Wash. Cty. Dep't of Soc. Servs.*, 129 A.3d 293, 304-05 (Md. Ct. App. 2015) (reversing findings that mother's persistent search for medical help for her potentially sexually abused child was a form of psychological abuse).

⁶⁷ See, e.g., A. 5922-23; R. 2960-64, 2979, 3023.

⁶⁸ A. 5647, 6469-70.

little dispute that abrupt removal of a child from their attachment parent inflicts significant long-lasting psychological trauma.⁶⁹ Yet numerous courts have subjected children to this known trauma, in response to supposed “alienation,” often after only an *ex parte* hearing with minimal evidentiary basis.⁷⁰

At worst, when alienation theory is used to force distraught children to live with parents they fear and find intolerable, children have committed suicide, either then, or later, when the trauma from their childhood suffering became too much to bear.⁷¹

In response to many of these concerns, the U.S. House of Representatives recently unanimously adopted House Concurrent Resolution 72, calling on states to improve family court practices to protect children.⁷²

⁶⁹ “It is difficult to understand a court participating in a psychological ‘diagnosis’ that requires trauma to the family as the ‘cure.’” Thomas & Richardson, *supra* note 14, at 24; *see also J.S.G. ex rel. J.S.R. v. Sessions*, 330 F. Supp. 3d 731, 740 (D. Conn. 2018); *Adoption of Michelle T.*, 117 Cal. Rptr. 856, 860 (Cal. Ct. App. 1975).

⁷⁰ Amici regularly review cases in which children were taken from their mothers in *ex parte* proceedings on the ground that the child’s continued claims of paternal abuse, supposedly caused by a toxic mother, create an emergency necessitating the child’s removal. *See, e.g.*, Amended Order of Custody & Child Support, *supra* note 43.

⁷¹ *See* Andrew Gumbel, *Obituary of Dr. Richard A. Gardner*, Independent (May 31, 2003), <https://www.independent.co.uk/news/obituaries/dr-richard-a-gardner-36582.html> (describing the suicide of Nathan Grieco following the grant of custody to his father, which was recommended by Gardner); Rhonda Case, *Louis’ Life Still Matters*, Free As The Sun (Mar. 18, 2019), <https://freeasthesun.com/2019/03/louis-life-still-matters> (describing in a letter to the House Judiciary Committee her son’s suicide as a young adult after being forced into custody of his abusive father by family court).

⁷² *See* H.R. Con. Res. 72, 115th Cong. (2017).

III. INDIVIDUAL APPEALS CANNOT ADEQUATELY REMEDY MISGUIDED RULINGS.

Unfortunately, while many alienation and/or abuse cases such as those referenced above call out for appellate correction, Amici have learned through painful experience that reversal of such cases is extremely rare and difficult. Reliance on this theory, despite its lack of a clear definition or supporting science, is typically seen as a factual or expert matter – and subject to judicial discretion.

Amici have long searched without success for a case with an adequate record challenging the lack of admissibility or misuse of alienation theory. Alienation has been so thoroughly integrated into family law practice that, in Amici's experience, most private lawyers do not even consider challenging its admissibility, and staging a challenge requires expert witnesses and significant cost. The thorough record in this case presents a compelling opportunity for a state high court to provide guidance in light of the issues detailed above. Should this Court agree, Amici stand ready to assist in exploring approaches to this problem. This Court may also consider several published proposals to cabin the misuses of alienation, including those by a thoughtful New York trial court,⁷³ those published in the critical literature,⁷⁴ or any another approach this Court deems appropriate.


⁷³ *J.F. v. D.F.*, 61 Misc. 3d 1226(A), 8-9 (2018) (unpublished).

⁷⁴ Meier, *Getting Real*, *supra* note 54, at 241-46 (proposing that abuse claims be adjudicated first separately and before considering an alienation claim); Zaccour, *supra* note 23, at 1110 (offering general guidelines to constrain misuses of alienation).

CONCLUSION

To date there has been virtually no oversight of the use of alienation theory in custody cases. Constraints on the misuse of this nonscientific concept to deny abuse or other legitimate concerns about a parent are urgently needed to prevent harm to children. Amici believe that this case is a precious and critical opportunity for thoughtful consideration of alienation theory, its legitimacy, and its risks. The children of New York and the nation deserve no less.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

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APPENDIX

STATEMENTS OF INTEREST OF AMICI CURIAE

Amicus curiae the Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”), founded in 2003 by one of the nation’s leading domestic violence lawyers and scholars, Joan S. Meier, has a demonstrated interest in the questions raised by this appeal. DV LEAP makes the law work for survivors by helping overturn unjust trial court outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists, and judges on best practices, and spearheading domestic violence litigation in the United States Supreme Court. DV LEAP specializes in issues before this Court: It is pioneering empirical research on family court outcomes, participating in legislative reforms, consulting with hundreds of protective parents each year, and litigating selected appeals on parental alienation and abuse. DV LEAP has also submitted 11 amicus briefs on a variety of issues to the United States Supreme Court.

Amicus curiae American Professional Society on the Abuse of Children (“APSAC”) is the leading national organization for professionals who serve children and families affected by child maltreatment, which includes both abuse and neglect. As a multidisciplinary group of professionals, APSAC achieves its mission in a number of ways – most notably through expert training and

educational activities, policy leadership and collaboration, and consultation that emphasizes theoretically sound, evidence-based principles. Since it was established in 1987, APSAC has played a central role in developing professional guidelines that address child maltreatment and, as such, is well qualified to inform the Court about the nature of child maltreatment and the ways society acts to prevent it.

Amicus curiae Battered Mothers Custody Conference (“BMCC”) is an annual event dedicated to informing the general public and battered women about the negative legal, psychological, child protective, and social ramifications commonly experienced by battered women who approach the family/divorce court system seeking protection from an abusive partner with whom she has had children. The BMCC brings together the nation’s top experts who donate their time to the conference in order to provide networking, social support, and outreach opportunities for battered women.

Amicus curiae Battered Women’s Justice Project (“BWJP”) is a national technical assistance center that provides training and resources for advocates, battered women, legal system personnel, policymakers, and others engaged in the justice system’s response to intimate partner violence (“IPV”). The BWJP promotes systemic change within the civil and criminal justice systems to ensure an effective and just response to victims and perpetrators of IPV, and the children exposed to this violence. The BWJP is an affiliated member of the Domestic

Violence Resource Network, a group of national resource centers funded by the Department of Health and Human Services and other support since 1993. The BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S. Department of Justice. In an effort to promote more safe and just results for women and their children, the BWJP works at state, national, and international levels to engage court systems in methods of accurately assessing the effects of IPV on women and children and to fashion safe outcomes that hold batterers accountable.

Amicus curiae California Protective Parents Association (“CPPA”) was founded in 1999 and provides education, research, and advocacy for non-offending parents whose children are placed with abusers. CPPA works in coalition with many organizations seeking to protect domestic violence victims and their children, to educate policy makers, and make effective changes to benefit child victims.

Amicus curiae Center for Judicial Excellence (“Center”) is dedicated to public education and community outreach to better protect abused children and domestic violence survivors in the family court system. Since its founding in 2006, the Center has filled a critical void, shining a light on a vital branch of government that wields tremendous power over the lives of average people. The Center has empowered citizen leadership, inspired government action, and become a major

catalyst in building a national movement for family court reform that puts child safety at the center of all that it does. Since 2008, the Center has tracked nearly 680 child homicides in the United States that were committed by a divorcing or separating parent.

Amicus curiae Children's Healthcare Is a Legal Duty USA ("CHILD USA") (www.childusa.org), a nonprofit think tank, draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread problems involving child protection. CHILD USA cuts through the shame and the secrecy to gather and analyze the data behind abuse and neglect. All child victims deserve justice, and CHILD USA aims to find the path for them.

Amicus curiae Family Violence Appellate Project ("FVAP") was founded in 2012 to ensure the safety and well-being of domestic abuse survivors and their children by helping them obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic abuse survivors and their children. Since its inception, FVAP has screened over 1,000 requests for assistance, has represented appellants and respondents in 46 appeals and writs, and has filed amicus curiae briefs in 12 cases that raised significant issues of statewide concern for domestic abuse survivors. Its work has, to date, resulted in 38 published appellate decisions

interpreting the Domestic Violence Prevention Act and other California Code sections designed to protect survivors of domestic abuse and their children.

Amicus curiae the Family Violence and Sexual Assault Institute dba Institute on Violence, Abuse and Trauma (“IVAT”), was founded as a nonprofit corporation in 1991 as a comprehensive resource, training, and professional services center concerned with all aspects of violence, abuse, and trauma. Through a focus on key collaborations, IVAT bridges gaps to help improve current systems of care on local, national, and international levels by sharing and disseminating vital information, improving cross-disciplinary collaborations, conducting research and trainings, and providing direct professional services, program evaluation, and consulting. IVAT condemns violence and oppression in all its forms. IVAT offers trauma-focused individual, family, and group therapy focusing on a wide range of issues, including all forms of interpersonal violence. IVAT is quite interested in how issues of domestic violence are portrayed in courts and in legal cases and that ensuring junk science is not being used to determine the outcomes of legal cases when there are issues of domestic violence and child abuse.

Amicus curiae Professor Jaya L. Connors is an advocate for survivors of intimate partner abuse. She is a Visiting Assistant Professor at Albany Law School, where she directs the Family Violence Litigation Clinic, a course in which law students provide legal representation to survivors of domestic violence in family

court proceedings. Professor Connors has had a long career representing survivors of intimate partner abuse. As the former Deputy Director of the New York State Appellate Division Third Judicial Department's Office of Attorneys for Children, she was tasked with providing ongoing legal education on issues, including domestic violence and parental alienation, to attorneys for children in twenty-eight counties in New York State. She is the former Legal Director of the Capital District Women's Bar Association's The Legal Project, a not-for-profit organization where survivors of domestic violence can access pro bono legal representation to advance their safety, stability, and independence. She was an attorney for the child for over ten years and in this capacity represented many children living in homes where issues involving domestic violence and alleged parental alienation were prevalent. Professor Connors has a substantial interest in ensuring that family courts in New York State recognize how children's voices and allegations of domestic violence in custody matters are being minimized due to alleged parental alienation allegations.

Amicus curiae The Leadership Council on Child Abuse & Interpersonal Violence (formerly the Leadership Council on Mental Health, Justice, and the Media; hereafter "the Leadership Council") was founded in 1998 by professionals concerned with the ethical application of psychological science to human welfare. The Leadership Council is a 501(c)(3) nonprofit scientific and professional

organization consisting of internationally recognized researchers and scholars within the scientific and legal communities. The mission of the Leadership Council is to provide professionals, officers of the court, and policy makers with the latest and most accurate scientific information on issues related to interpersonal violence. As part of its mission, the Leadership Council disseminates high quality scientific and medical research concerning the prevalence and consequences of child abuse and other forms of interpersonal violence in the general population. The Leadership Council has previously filed amicus briefs in both state and federal court cases, and has provided testimony before Congress and state legislatures. It has also supported peer-reviewed research and hosted academic conferences. Collectively, its board members have published hundreds of articles in peer-reviewed journals on the effects of trauma on children and adults. Advisory board members include internationally known forensic experts, clinical care providers for trauma victims, editors and reviewers for major journals, and leaders in both the American Psychological Association and the American Psychiatric Association. As such, amicus is familiar with and has an interest in participating in this appeal and seeks to provide this Court with relevant scientific and other information related to the scientific basis of parental alienation and its utility in court proceedings, and its likely impact on children and victims of trauma.

Amicus curiae Legal Momentum, established in 1970, is the nation's oldest legal advocacy organization for women, advancing the rights of women and girls by using the power of the law and creating innovative public policy. Legal Momentum was one of the leading advocates for the landmark Violence Against Women Act and its subsequent reauthorizations, which seek to redress the historical inadequacy of the justice system's response to gender-based violence. Legal Momentum has written many amicus briefs to, and appeared before, the United State Supreme Court in cases addressing violence against women. Legal Momentum's National Judicial Education Program ("NJEP"), established in 1980, has a particular interest in ensuring that the judicial system adequately protects the rights of child and adult victims of sexual abuse and domestic violence. NJEP is the author of a model judicial education curriculum, *Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute*, and a web course, *Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases*. NJEP's Director, Lynn Hecht Schafran, is the author of *Evaluating the Evaluators: The Problems with "Outside Neutrals," Judges' Journal*, Winter 2003; *Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence*, JUDICATURE 161 (Jan.-Feb. 2010); and *Domestic Violence, Developing Brains and the Lifespan: New Knowledge from Neuroscience*, Judges' Journal, Summer 2014.

Amici curiae Margaret B. Drew and the Human Rights at Home Clinic of the University of Massachusetts School of Law advocate for survivors of intimate partner abuse. Margaret B. Drew is an Associate Professor at University of Massachusetts Law School, where she directs the Human Rights at Home Clinic. Professor Drew has a long career representing survivors of intimate partner abuse in family court matters. The Clinic represents those whose fundamental human rights are unprotected and unenforced in U.S. legal and other systems. In family court, the clinic attorney and student attorneys represent abused mothers whose children are at risk of being placed with the abusive parent through the family court. The Clinic and Professor Drew individually have a substantial interest in seeing that the courts recognize the impact of abuse and the manipulation of the courts that frequently occurs when an abuser raises claims of “parental alienation.”

The mission of amicus curiae National Association of Women Lawyers (“NAWL”) is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As part of its mission, NAWL promotes equal opportunity and full participation in society, regardless of gender, sexual orientation, or gender identity.

Amicus curiae National Organization for Men Against Sexism (“NOMAS”) is a not-for-profit corporation that started 42 years ago. It is a pro-feminist, anti-racist, gay-affirming organization. It is an organization that promotes social change and one of our major areas of work concerns child custody. NOMAS believes it is important for a primarily men’s organization to support protective mothers. It believes the research is clear that custody courts are tilted in favor of abusive fathers and in doing so cause enormous harm to children. It believes that the widespread failure to rely on current scientific research, gender bias, and reliance on professionals who are experts in mental illness and psychology but not domestic violence or child sexual abuse, as well as the continued use of outdated and discredited approaches adopted in the 1970s at a time when little research was available are important causes of the frequency of decisions that take or ruin children’s lives.

Founded in 1990, amicus curiae New York Legal Assistance Group (“NYLAG”) is a not-for-profit organization dedicated to providing free civil legal services to New York’s low income families. NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. It addresses emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. The Matrimonial & Family Law Unit of NYLAG provides legal consultation and representation to

survivors of intimate partner violence on a priority basis. In addition to obtaining orders of protection, NYLAG provides survivors with representation in child protection, custody, visitation, child and spousal support, and both contested and uncontested matrimonial matters. NYLAG has further demonstrated its commitment to promoting legal services for survivors of intimate partner violence through its Domestic Violence Clinical Center (“DVCC”). The DVCC is an innovative program administered and supervised by NYLAG attorneys, which offers law students the opportunity to learn the substantive and litigation skills necessary to provide exceptional representation to survivors of intimate partner violence. As such, NYLAG has a special degree of knowledge and expertise in litigating complex custody matters, including matters where claims of “parental alienation” are raised.

Amicus curiae Sanctuary for Families is New York’s largest dedicated service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence. Every year, Sanctuary provides legal, clinical, shelter and economic empowerment services to over 15,000 survivors and their children. Sanctuary provides training, and engages in outreach and advocacy on issues related to domestic violence and trafficking to community advocates, *pro bono* attorneys, law students, service providers and the judiciary.

Sanctuary provides direct representation to survivors in connection with a number of legal needs, including, as relevant here, custody and visitation matters.

Amicus curiae the Women's Law Project ("WLP") is a Pennsylvania-based non-profit public interest legal center dedicated to advancing the rights and status of women and girls through litigation, policy development, public education, and individual counseling. Assisting domestic violence victims has been a major focus of our advocacy efforts. In addition to authoring and joining in amicus briefs, the WLP has pursued a number of initiatives focused on improving the response of the judicial and law enforcement systems to victims of domestic violence. These include the April 2003 publication *Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community*, which presents WLP's findings and recommendations to improve the court's responsiveness to litigants, as well as its 2005 bench book for Pennsylvania judges on issues arising in custody cases where domestic violence is an issue. WLP also prepares and disseminates informational brochures to assist pro se litigants in navigating court procedures relating to domestic violence and custody.