IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 26544

STATE OF SOUTH DAKOTA,

Plaintiff/Appellant

vs.

MARICELA NICOLASA DIAZ,

Defendant/Appellee

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT, HANSON COUNTY, SOUTH DAKOTA

THE HONORABLE TIMOTHY W. BJORKMAN
CIRCUIT COURT JUDGE

BRIEF OF *AMICI CURIAE* CENTER ON WRONGFUL CONVICTIONS OF YOUTH *ET AL.*

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I. INTEREST OF *AMICI CURIAE*

Amici include juvenile justice practitioners, professors, and researchers with special expertise in juveniles' ability to navigate custodial interrogations. *Amici* know from their combined experience that juveniles' immaturity, vulnerability to external pressure, and diminished ability to weigh risks and long-term consequences obstruct their ability to knowingly, intelligently, and voluntarily waive their *Miranda* rights. For this reason, *Amici*'s combined expertise will aid this Court in resolving Maricela's case. The following statements further explain the identity and interest of each *amicus* party.

A. Center on Wrongful Convictions of Youth

The Center on Wrongful Convictions of Youth ("CWCY") represents wrongfully convicted youth and promotes nationwide initiatives – including efforts to reform the administration of *Miranda* rights to juveniles – aimed at reducing the frequency of wrongful convictions. The United States Supreme Court recently cited the CWCY's *amicus curiae* brief to show that the risk of false confession is "all the more acute" when the subject of custodial interrogation is a juvenile. *See J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011). The CWCY's founder, Steven Drizin, has also been cited by the U.S. Supreme Court as an authority on confessions and interrogations. *See Corley v. U.S.*, 129 S. Ct. 1558, 1570 (2009) ("there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed") (citing Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. Rev. 891, 906-07 (2004)).

B. Tamar Birkhead, Associate Professor of Law at the University of North Carolina at Chapel Hill Law School

Professor Birkhead teaches the Juvenile Justice Clinic and is president of the board for the North Carolina Center on Actual Innocence. Her commentary has been published in the *Los Angeles Times*, *Huffington Post*, and *Juvenile Justice Information Exchange.* She regularly consults on matters related to juvenile justice reform, criminal law and procedure, and indigent criminal defense and frequently assists litigants, advocates, and scholars with *amicus* briefs, policy papers, and expert testimony concerning juvenile delinquency.

C. Barry C. Feld, Centennial Professor of Law, University of Minnesota Law School

Professor Feld has taught, studied, and written about juvenile justice for four decades. He is the author of the leading casebook and Nutshell on juvenile justice, has studied juveniles' ability to waive counsel during interrogation, and recently published the first empirical study of what happens when police question adolescents accused of felonies: Kids, Cops, and Confessions: Inside the Interrogation Room (NYU Press 2013).

D. Wendy Hess, Assistant Professor of Law, University of South Dakota School of Law

Professor Hess directs the Fundamental Legal Skills program at the University of South Dakota School of Law. She has researched and written about prosecuting juveniles as adults and is lead author of "Just Kids: Baltimore's Youth in the Adult Criminal Justice System" (2010).

E. Perry L. Moriearty, Associate Professor and Co-Director of the Child Advocacy and Juvenile Justice Clinic, University of Minnesota Law School

Professor Moriearty co-directs the University of Minnesota's Child Advocacy and Juvenile Justice Clinic. The Clinic assists low-income youth in misdemeanor, traffic, truancy, and runaway matters, and helps clients seal their juvenile records. Professor Moriearty has taught and written extensively about juvenile justice and has participated as *amicus* in several juvenile cases.

F. Children and Family Justice Center

The Children and Family Justice Center ("CFJC") has represented young people in conflict with the law for over twenty years. In addition to its direct representation of youth in matters relating to delinquency and crime, school discipline, immigration/asylum, and fair sentencing practices, the CFJC also collaborates with community members and advocacy organizations to develop strategies for systems reform. The CFJC recently received the Macarthur Award for Creative and Effective Institutions.

G. The Juvenile Law Center

Founded in 1975, the Juvenile Law Center ("JLC") is the oldest public interest law firm for children in the United States. The JLC advocates on behalf of youth in the child welfare, criminal, and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, the JLC works to ensure that public systems help vulnerable children become healthy and productive adults and that law enforcement practices reflect adolescent developmental differences. The JLC participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

H. Loyola Law School Center for Juvenile Law and Policy

The Loyola Center for Juvenile Law and Policy ("CJLP") is dedicated to reforming the juvenile justice system through research and advocacy. Through direct client representation, community involvement, and policy research and advocacy, the CJLP provides a voice for children and families involved in the juvenile justice system and a point of convergence for students, faculty, stakeholders, and community members dedicated to the creation of a more humane justice system for children.

I. National Juvenile Defender Center

The National Juvenile Defender Center ("NJDC") was created to ensure excellence in juvenile defense and promote justice for all children. The NJDC works to build the juvenile defense bar in order to improve access to counsel and quality of representation for children. The Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, and participate in the national juvenile justice debate. The NJDC supports public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law centers to ensure quality representation for all youth. The NJDC also offers training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination services to juvenile defenders and advocates.

II. INTRODUCTION

Both the United States and South Dakota Supreme Courts have long recognized that juveniles need special protection during police interrogations. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2399-2400 (2011) ("It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same

circumstances would feel free to leave"); *State v. Horse*, 2002 S.D. 47, ¶ 11, 644 N.W.2d 211 (2002) (concerns about *Miranda's* protections are "only heightened when juveniles are interrogated"). Accordingly, interrogation practices that pass constitutional muster for adult suspects must be given special scrutiny when the subject of interrogation is a juvenile.

The trial court understood this when it held that fifteen-year-old Maricela Diaz did not knowingly and intelligently waive her *Miranda* rights. (Order, 6-23, 78.)[1] It properly recognized that when police contacted Maricela's mother before her interrogation, they misleadingly told her only that Maricela was a witness, not that she was suspected of murder. (Order, 9-15.) Police also failed to inform Maricela or her mother that they could consult with each other *before* the interrogation, telling her mother instead that "you can talk with her later." (Order, 15.) Further, police minimized the significance of the *Miranda* rights by telling Maricela that they were only a "protocol" and "not a big deal at all." (Order, 17.) After being read her rights, saying more than once that she did not understand them, and being told that the police wanted to talk to her, Maricela did agree to talk with the police. However, Maricela never expressly waived her *Miranda* rights. (Order, 18-22.) Such tactics cannot be condoned when the subject of the interrogation is a fifteen-year-old child. *Amici* urge this Court to affirm the trial court's well-reasoned and child-centered opinion suppressing Maricela's confession.

Furthermore, *Amici* urge this Court to expand the protections afforded to youth in the interrogation room. In particular, this Court should expand juveniles' rights under the parental consultation rule to require that they be afforded a meaningful consultation with

[1] Citations to the "Order" refer to the trial court's Amended Memorandum Decision on Suppression, Findings of Fact and Conclusions of Law and Order (Oct. 24, 2012).

an interested adult – preferably an attorney – before interrogation begins, as several other states have done. Similarly, *Amici* urge this Court to require police to ask juveniles to explain the *Miranda* rights in their own words and to obtain express waivers from them. Finally, *Amici* urge this Court to require that all custodial interrogations of juvenile suspects be electronically recorded from the *Miranda* rights until the end. Such requirements will provide police with clear guidance while firmly protecting the rights of South Dakota's children.

III. THE U.S. SUPREME COURT, THE SOUTH DAKOTA LEGISLATURE, AND THIS COURT HAVE ALL RECOGNIZED THAT CHILDREN REQUIRE SPECIAL PROTECTIONS DURING INTERROGATION.

A. The U.S. Supreme Court has repeatedly acknowledged that children require special protections during police interrogation.

For seven decades, the U.S. Supreme Court has recognized that juveniles experience interrogations differently than adults. Beginning in *Haley v. Ohio*, the Court held that a youth—an "easy victim of the law"—could easily succumb to coercive interrogation unless adequate protections are in place. 332 U.S. 596 (1948). Fourteen years later, the Court reiterated that "a 14-year-old boy, no matter how sophisticated, is . . . not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). Five years later, the Court explicitly admonished that if a child is

interrogated without counsel, "the greatest care must be taken to assure that the admission was...not the product of ignorance of rights." *In re Gault,* 387 U.S. 1, 55 (1967).

More recently, the U.S. Supreme Court has relied on developmental psychology and adolescent brain science to find that juveniles are particularly likely to make involuntary and even false confessions during the pressure-cooker of police interrogation. In the Eighth Amendment context, the Court has repeatedly explained that children are more vulnerable than adults to the application of external pressure; they are suggestible, impulsive, and eager to please authority figures; and they are hampered by immature decision-making. *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012); *Graham v. Florida*, 130 S.Ct. 2011, 2026, 2032 (2010); *Roper v. Simmons*, 543 U.S. 551, 569 (2005). In *J.D.B. v. North Carolina*, the Court established that these same traits make youth particularly ill-suited to engage in the high-stakes risk-benefit analysis inherent in any police interrogation. 131 S.Ct. at 2398. There, it established that "children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave." *Id.* The Court reiterated that custodial interrogation can induce false confessions—even from adults—at an alarming rate, and it emphasized that this problem is "all the more acute" when the subject of interrogation is a juvenile, because young people are "most susceptible to influence and outside pressures."[2] *Id.* at 2401, 2405. Even the dissenting justices explained that they "do not dispute that many suspects who are under 18 will be more susceptible to police pressure than the average adult." *Id.* at 2413 (Alito, J., dissenting). Ultimately, *J.D.B.* stands for the proposition that

[2] Studies show that juveniles are more likely than adults to falsely confess during police interrogation. *See, e.g.*, Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA Age*, 82 N.C. L. Rev. 891, 944 (2004).

interrogation tactics that might withstand constitutional scrutiny for an adult will not withstand such scrutiny for a juvenile.

B. South Dakota law recognizes that children need special protections when in police custody.

Recognizing that police should treat juveniles differently than adults, the South Dakota legislature has required police to follow certain protective procedures when dealing with youth. SDCL § 26-7A-15, in particular, requires officers who take a child into custody to immediately notify the child's parent or guardian "of the temporary custody and of the right to a prompt hearing by the court to determine whether temporary custody should be continued." This Court has deemed this provision a "crucial statutory safeguard to assure the due process of rights of juveniles taken into custody." *Horse*, 2002 S.D. 47 at ¶ 17. In Maricela's case, however, police skirted this "crucial" safeguard – a practice that cannot be condoned. *See id.* at ¶ 20 (disapproving of police who did not "comply with either the letter or the spirit of the notification statute").

C. Leading law enforcement representatives recognize that juveniles should be treated differently than adults during interrogations.

Juveniles' vulnerability during interrogation has been recognized not only by the courts, but also by law enforcement. The International Association of Chiefs of Police ("IACP") recently published a juvenile interrogation guide that has been disseminated to police chiefs nationwide.[3] *See Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation* (2012), available at www.defensenet.org/ resources/additional-resources-and-links-1/additional-resources-and-links ("Reducing

[3] The Guide was written by a team of experts including the undersigned.

Risks"). This guide recognizes that "young people are particularly vulnerable to making false or involuntary statements when subjected to pressure-filled questioning tactics." *Id.* at 15. Relying in part on scientific studies of the adolescent brain, the guide explains that children emphasize immediate rewards over long-term consequences, have difficulty assessing risks, and are more vulnerable to external pressures than adults. *Id.* Because of these differences, the IACP advises police to "ask the child after each individual [*Miranda*] warning to explain it back in his or her own words" before accepting the child's waiver. *Id.* at 7.

John E. Reid & Associates—the firm that developed the leading police interrogation method known as the Reid Technique—agrees that youth are at higher risk for involuntary and false confessions. It advises police trainees to "exercise extreme caution and care when interviewing or interrogating a juvenile." *See* John E. Reid & Associates, *Critics Corner*, http://www.reid.com/educational_info/ criticfalseconf.html. In particular, Reid advises that "[w]hen a juvenile in custody . . . is advised of his Miranda rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them." *Id.*

IV. FIFTEEN-YEAR-OLD MARICELA DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HER *MIRANDA* RIGHTS.

Courts must look to the totality of the circumstances in determining whether a juvenile has made a knowing, intelligent, and voluntary *Miranda* waiver. *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979). Under this analysis, courts ask whether—in light of the defendant's age, experience, education, background, and intelligence—the defendant understood her rights to silence and counsel and whether she knowingly and intelligently

gave up those rights. *Id.* at 725; *State v. Hartley,* 326 N.W.2d 226, 231 (S.D. 1982). The trial court meticulously weighed these factors, giving special consideration to Maricela's youth, before suppressing. This Court should affirm.

A. Maricela's youth and language limitations weigh strongly against finding a knowing and intelligent waiver.

Maricela was only fifteen years old when she was interrogated. This Court has deemed a child's age a "significant factor" in the voluntariness context. *State v. Caffrey*, 332 N.W.2d 269, 272 (S.D. 1983) (urging courts to take "great care" to ensure that a "juvenile's confession...was not the product of ignorance of rights"). It is equally significant in the *Miranda* waiver context. Scientific research has established that children under sixteen cannot understand the *Miranda* rights as well as adults. *See, e.g.*, Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 353-56 (2003). Children of Maricela's age focus on short-term consequences and rewards, rendering them less capable than adults of making long-term decisions. Elizabeth S. Scott & Lawrence Steinberg, *Blaming Youth,* 81 Tex. L. Rev. 799, 814-15 (2003). Juveniles under sixteen are also more likely to speak with police rather than asserting their rights to silence. *See* Grisso et al., 27 Law & Hum. Behav. at 25, 30.

Additionally, Maricela did not speak English well. She scored in the third- to fourth-grade level in one English reading test and at the kindergarten level in another. (Order, 50.) Indeed, Maricela could not even explain that she could not understand her interrogators until she spoke with a Spanish-speaking officer. (Order, 51.) This language barrier unquestionably limited her ability to understand and waive her *Miranda* rights.

B. No steps were taken to ensure that Maricela understood her *Miranda* rights, such as asking her to explain the rights in her own words or allowing her a meaningful opportunity to consult with an interested adult.

Despite Maricela's youth and limited English, police did not ensure that she understood her *Miranda* rights – a necessary precursor to a finding that she knowingly and intelligently waived them. At no time did they explain what the rights meant using words that she could understand, nor did they ask her to explain her rights in her own words, as recommended by the IACP. *See* Reducing Risks. These failures should weigh heavily against a finding of waiver.

Furthermore, Maricela had no opportunity to consult with an interested adult before police asked her to waive her rights. (Order, 38.) Indeed, police did not fully honor their obligation to notify Maricela's mother of her situation. *Horse*, 2002 S.D. 47 at ¶ 17 (the purpose of South Dakota's "crucial" parental notification statute is "to allow, where possible, [a] parent to confer and counsel with [the juvenile] before interrogation"); *People ex rel. J.M.J.*, 2007 S.D. 1, ¶ 14, 726 N.W.2d 621 (2007) ("The young mind may lack the sophistication, knowledge or maturity to understand the ramifications of an admission"). Instead, when seeking Maricela's mother's permission to question her, police told the mother that Maricela "could be a witness in an investigation" rather than a suspect in a murder case. (Order, 32.) Maricela's mother was also told that she could talk to Maricela, but only "later." (Order, 33.) Rather than convey the seriousness of Maricela's position, police misled her mother into believing that her daughter was safe and in no legal jeopardy – in other words, that no parental guidance was needed – and that, in any event, she could not see Maricela before the interrogation.

Such tactics deprived Maricela of the opportunity to obtain crucial parental guidance concerning whether she should waive *Miranda*.

Several states have adopted protective parental consultation rules requiring that the parent be fully informed about the consequences of speaking with the police. *See D.M. v. State*, 949 N.E.2d 327, 335 (Ind. 2011) (police must provide a private atmosphere free from police pressure in which parent and juvenile may "meaningful[ly]" discuss the "allegations, the circumstances of the case, and the ramifications of their responses to police questioning"); *Commonwealth v. McCra*, 427 Mass. 564, 567-68 (1998) (a juvenile must have an opportunity to meaningfully consult with a parent, to ensure that the juvenile understands the consequences of waiving his rights); *In re J.B.*, 159 Vt. 321, 325 (1992) (a juvenile must have an opportunity to consult with an interested adult who is informed and aware of the juvenile's rights); *McIntyre v. State*, 309 Md. 607 (1987) (weighing absence of a parent or guardian more heavily than other factors in the totality of the circumstances analysis); *In re B.M.B.*, 264 Kan. 417, 432-33 (1998) (statement cannot be used against a minor under 14 in the absence of consultation with a parent or attorney); *State v. Presha*, 163 N.J. 304, 315 (2000) (confession made without a parent present is inadmissible unless the parent was unwilling or truly unable to be present).

In *Horse*, this Court required police to attempt to notify a child's parent or custodian before interrogating the child, but it rejected a *per se* rule that would have required either that a juvenile must consult with a parent or custodian before questioning or that such a person must be present during questioning. 2002 S.D. 47 at ¶ 26. Instead, the Court held that police's failure to afford a child an opportunity to confer with such a person is a "significant" factor in evaluating a confession's voluntariness. *Id. Amici* urge

this Court to follow those states that have adopted a "meaningful parental consultation" standard, at least when the police have successfully contacted a parent. When a parent is at the police station, for instance, this practicable rule would simply require that police allow parent and child to privately discuss the consequences of speaking to the police. In Maricela's case, police would have simply had to hand her the phone and let her privately speak with her mother. To require police to notify a parent but then – after successful contact has been made – to deny the parent and child the opportunity to confer is to subvert the purpose of the parental notification statute.

To fully ensure that juveniles knowingly and intelligently waive their *Miranda* rights, however, the better rule is to require "meaningful attorney consultation" for juveniles. *See* American Academy of Child and Adolescent Psychiatry, *Policy Statement: Interviewing and Interrogating Juvenile Suspects* (2013), available at www.aacap.org/cs/root/policy_statements/interviewing_and_interrogating_juvenile_suspects ("AACAP Policy Statement") ("[J]uveniles should have an attorney present during questioning by police"). Too many parents do not understand their own *Miranda* rights, let alone the rights of their children. Indeed, parents often end up pressuring their children to confess because of a mistaken belief that leniency will follow. *See* Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 Am. Crim. L. Rev. 1277, 1278 (2004). Moreover, interrogators are trained to marginalize parents by seating them away from their children, telling them to stay quiet, or otherwise conveying to them to be passive. *See* Fred E. Inbau et al., *Criminal Interrogation and Confessions* (5th ed. 2013). Such tactics, however, do not work as well on attorneys with experience advising juveniles being interrogated.

C. Maricela was never expressly asked to give up her *Miranda* rights, and implying waiver in her case is problematic.

At no time during Maricela's interrogation did the police use the word "waiver" or explain what it meant. Furthermore, at no time did Maricela explicitly say that she wished to give up her rights to counsel and silence. (Order, 61.) Instead, after asking whether she understood her rights, the police asked, "And do you want to talk to us about the events that we – yes or no?" (Order, 21.) After a discussion about her preference to speak in Spanish, the officers inferred waiver when Maricela said "mm-hmm" and continued to talk to them. (Order, 20-22.) Finding implied waiver under such circumstances would be problematic in the case of a seasoned adult suspect – but in the case of a naïve juvenile, it defies common sense.

When it is unclear whether a suspect has waived her *Miranda* rights, police must clarify any uncertainty before proceeding. *State v. Tuttle*, 2002 S.D. 94, ¶ 14, 650 N.W.2d 20 (2002). Such clarification is glaringly absent here. Instead, before Maricela "waived" her rights, the police misleadingly minimized their significance: "There's a protocol that I've gotta go through first, okay? Not a big deal at all and we'll get through this and we'll getcha takin' care of." (Order, 55.) *See Doody v. Ryan,* 649 F.3d 986 (9th Cir. 2011) (suppressing 17-year-old's confession because, *inter alia*, police downplayed the *Miranda* rights).

To avoid such situations in the future, this Court should require juveniles to expressly waive their *Miranda* rights. *Cf. North Carolina v. Butler,* 441 U.S. 369, 373 (1979). At the least, police's failure to obtain an express waiver from a juvenile should weigh heavily against a finding of a knowing, intelligent, and voluntary waiver.

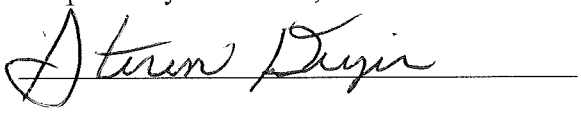
D. In order to help courts determine whether juveniles have voluntarily, knowingly, and intelligently waived their *Miranda* rights and whether their statements are voluntary, this Court should require police to electronically record interrogations of juvenile suspects.

Although portions of Maricela's interrogation were recorded – including, fortunately, her dubious *Miranda* "waiver" – some of the most important parts, including the events leading up to her confession, went unrecorded. The time has thus come for this Court, in keeping with its tradition of scrutinizing juvenile interrogations with special care, to join the growing number of high courts that require or strongly encourage police to electronically record interrogations. *See Stephan v. State*, 711 P.2d 1156 (Alaska 1985); *State v. Scales*, 518 N.W.2d 587 (Minn. 1994); *In re Jerrell C.J.*, 699 N.W.2d 110 (Wisc. 2005); *Commonwealth. v. DiGiambattista*, 813 N.E.2d 516 (Mass. 2004); *State v. Hajtic*, 724 N.W.2d 449 (Iowa 2006); *State v. Cook,* 847 A.2d 530 (N.J. 2004); *State v. Barnett*, 789 A.2d 629 (N.H. 2001). Notably, the Wisconsin Supreme Court has required police to record all custodial interrogations of juveniles, because recording would "enable judges to conduct a more nuanced review to resolve admissibility issues," protect police from frivolous claims of misconduct, and protect juveniles' rights. *Jerrell C.J*, 699 N.W.2d at 122-123; *see also* AACAP Policy Statement (recommending that all juvenile interrogations be video-recorded). All of these reasons apply with equal force in South Dakota and should prompt this Court to require all juvenile interrogations to be electronically recorded.

V. CONCLUSION

This Court should affirm the trial court's suppression of Maricela's confession. In so doing, *Amici* urge this Court to require police to have juveniles explain their *Miranda* rights in their own words; to mandate that juveniles receive an opportunity to meaningfully consult with an interested adult – preferably an attorney – before interrogation; and to insist that officers obtain express *Miranda* waivers from juveniles. Moreover, this Court should facilitate lower courts' review of these issues by requiring that all police interrogations of juveniles be electronically recorded. These measures will ensure that no other juvenile will waive rights that she does not understand.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66, counsel for *Amici Curiae* does hereby submit the following:

The foregoing brief is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 4,266 words and 23,939 characters in the body of the brief.

Steven A. Drizin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Brief of *Amici Curiae* in the above-entitled action were duly served by mailing true copies thereof by United States mail, first class postage thereon prepaid, on the ___ day of April, 2013, to the following named persons at their last known post office address as follows:

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The undersigned further certifies that the original and fourteen (14) copies of the Brief of *Amici Curiae* in the above-entitled action were mailed to the Clerk of the Supreme Court of South Dakota, 500 East Capitol, Pierre, SD 57501-5070, by United States mail, first class postage thereon prepaid, on the date above written.

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