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11 National Advocates for Pregnant Women; National Association of Social Workers; National Women's Health Network;
12 Postpartum Support International; Tucson Postpartum Depression Coalition; Diana Lynn Barnes, Psy.D.; Michelle Oberman, J.D.;
13 Margaret Spinelli, M.D.; and Teresa Twomey, J.D.

14 SUPERIOR COURT OF ARIZONA
15 COUNTY OF MARICOPA

16 STATE OF ARIZONA,
17
18 Plaintiff / Respondent,
19
20 vs.
21 HOPE LYNETTE KING,
22
23 Defendant / Petitioner.

No. CR 2001-003384

**AMICI CURIAE BRIEF IN SUPPORT
OF RULE 32 PETITION FOR POST-
CONVICTION RELIEF**

24 **I. INTRODUCTION**

25 Seven distinguished organizations and four distinguished medical and legal
26 professionals join together here to submit this *amici curiae* brief in support of Hope
27 Lynette King's post-conviction relief petition. In 2002, King was convicted of felony
28 child abuse and sentenced to a 40-year flat sentence. It is now understood that King likely
suffered from postpartum psychosis, an illness that many in the medical community were
not fully aware of, much less educated about, at the time of King's trial. Given their
expertise and experience, the *amici curiae* can assist the Court in seeing that significant
advancements in the understanding of reproductive mental health, including postpartum
psychosis, have occurred since 2002. The newly discovered facts probably would have
changed King's verdict had they been available at the time of King's trial. The *amici*

1 *curiae* therefore believe that the Court should grant King’s request for post-conviction
2 relief under Rule 32.1 of the Arizona Rules of Criminal Procedure.

3 **II. IDENTIFICATION AND INTEREST OF *AMICI CURIAE***

4 *Amici curiae* Arizona Postpartum Wellness Coalition, International Association for
5 Women’s Mental Health, National Advocates for Pregnant Women, National Association
6 of Social Workers, National Women’s Health Network, Postpartum Support International
7 and Tucson Postpartum Depression Coalition are organizations that, among other things,
8 represent health care and social workers, advocate for maternal and child health, educate
9 the health care community and the public regarding women’s health issues, and provide
10 services to the public. *Amici curiae* Diana Lynn Barnes, Psy.D., Michelle Oberman, J.D.,
11 Margaret Spinelli, M.D., and Teresa Twomey, J.D. are individuals with great medical and
12 legal expertise with regard to postpartum psychosis. Based on their scientific knowledge,
13 their intimate familiarity with the advancement of the understanding of reproductive
14 mental health, and their active work in educating the medical and legal communities and
15 the public at large regarding postpartum mental illness, including postpartum psychosis,
16 these organizations and individuals are well-qualified to assist the Court in understanding
17 the medical facts material to King’s case that have become broadly known since her trial
18 and conviction in 2002 and assessing whether the evidence shows that King suffered from
19 postpartum psychosis in late 2000 and early 2001.

20 **Arizona Postpartum Wellness Coalition (APWC)** is a state-wide non-profit
21 organization founded in 2005 and dedicated to improving the pregnancy and postpartum
22 experience for Arizona families through providing education and support for families and
23 health care providers, increasing awareness of the serious nature of perinatal¹ mood and
24 anxiety disorders, and improving access to available screening methods, treatment options
25 and resources in Arizona. APWC was founded by Christina Hibbert, Psy.D., a specialist
26 in perinatal mood disorders.

27 _____
28 ¹ The term “perinatal” refers to pregnancy through the period one year after childbirth, and
the terms “postpartum” and “puerperal” refer to the period up to one year after childbirth.

1 **International Association for Women’s Mental Health (IAWMH)** is a non-
2 profit, non-governmental organization established in 2001 and dedicated to improving the
3 mental health of women around the world. The 2011 IAWMH Congress was attended by
4 850 medical professionals from 68 countries. The principal mission of IAWMH is to
5 expand the fund of knowledge about women’s mental health, promote gender-sensitive
6 and autonomy-enhancing mental health services for women, and advance collaboration
7 among societies.

8 **National Advocates for Pregnant Women (NAPW)** is a non-profit organization
9 dedicated to ensuring the human and civil rights, health and dignity of pregnant and
10 parenting women, while protecting children from counterproductive and misguided state
11 policies. NAPW advocates for reproductive and family justice, including the right to
12 evidence based medical care and the rights of parents and children to family integrity
13 undisrupted by inappropriate state action.

14 **National Association of Social Workers (NASW)**, established in 1955, is the
15 largest association of professional social workers in the world with nearly 145,000
16 members and 56 chapters throughout the United States and internationally. The NASW,
17 Arizona Chapter has 1,733 members. With the purpose of developing and disseminating
18 standards of social work practice while strengthening and unifying the social work
19 profession as a whole, NASW provides continuing education, enforces the *NASW Code of*
20 *Ethics*, conducts research, publishes books and studies, promulgates professional criteria,
21 and develops policy statements on issues of importance to the social work profession.
22 NASW recognizes the importance of child protection and that “[c]hild maltreatment issues
23 and concerns do not operate in isolation. To improve the service delivery in the area of
24 child abuse and neglect, those systems that run parallel—mental health, substance abuse,
25 domestic abuse, homelessness, and health care—need to be enhanced to effectively
26 develop a service continuum directed at safety for children.” NASW, *Child Abuse and*
27 *Neglect*, SOCIAL WORK SPEAKS, 43, 47, 9th ed. (2012). NASW’s statement, *Women’s*
28 *Issues*, supports “adequate funding and increased research on health and mental health

1 services and issues that address the special needs of women, including adolescent women,
2 poor women, women of color, lesbians, older women and women with disabilities.”
3 NASW, SOCIAL WORK SPEAKS, 363, 367, 9th ed. (2012). NASW’s family policy also
4 supports “comprehensive and available health, mental health, and family planning
5 services, including strategies focused on prenatal and perinatal care for high-risk mothers.”
6 NASW, SOCIAL WORK SPEAKS, 136, 140, 9th ed. (2012). NASW has recently published a
7 book directed at health care professionals, K. Zittel, *Postpartum Mood Disorders, A Guide*
8 *for Medical, Mental Health, and Other Support Providers* (2010), which states, “Despite
9 the negative effects of PMDs [postpartum mood disorders] on the family, many women
10 are still not receiving the assistance they need, and few social workers, counselors,
11 psychologists, or doctors ever receive specific training on how to assess, diagnose, or treat
12 these disorders [citation omitted].”

13 **National Women’s Health Network (NWHN)** is a national organization dedicated
14 to improving women’s health policy by conducting advocacy campaigns that influence
15 federal and state policy as well as health care providers and health-related companies.
16 NWHN currently focuses its efforts on securing women’s sexual and reproductive health
17 and autonomy, raising women’s voices in health care, and challenging dangerous drugs
18 and devices.

19 **Postpartum Support International (PSI)** is a large and influential coalition of
20 health care professionals working in the field of perinatal mental health. PSI has an
21 international following that is dedicated to helping women suffering from perinatal mood
22 and anxiety disorders, including postpartum depression and postpartum psychosis. PSI
23 was founded in 1987 to increase awareness among public and professional communities
24 about the emotional difficulties that women can experience during and after pregnancy.
25 The organization offers support, reliable information, best practice training, and volunteer
26 coordinators in all 50 U.S. states, Canada, Mexico, and more than 30 other countries.
27 Working together with its volunteers, professionals, researchers, legislators and others, PSI
28

1 is committed to educating, eliminating stigma and ensuring that compassionate and quality
2 care is available to all families.

3 **Tucson Postpartum Depression Coalition (TPDC)** is a non-profit organization
4 based in Tucson, Arizona, founded in 2005, and dedicated to promoting maternal
5 emotional health through education, support and advocacy. TPDC advances its mission by
6 promoting awareness and education for health care professionals and the public, being a
7 recognized leader in postpartum support, creating and nurturing partnerships with
8 community organizations serving pregnant and postpartum women, and being an
9 influential voice for maternal emotional health promotion.

10 **Diana Lynn Barnes, Psy.D.** is a psychotherapist who specializes in women's
11 reproductive mental health. She is past president of PSI and currently sits on the
12 President's Advisory Board for PSI. She is a fellow of the American Psychotherapy
13 Association and a member of the Los Angeles Perinatal Mental Health Task Force and the
14 statewide California Maternal Mental Health Task Force. Dr. Barnes is internationally
15 recognized as an expert on infanticide, neonaticide and pregnancy denial, and she is
16 frequently called to consult and testify in cases involving postpartum psychosis. Dr.
17 Barnes authored the article *Infanticide* in the 2010 Encyclopedia of Motherhood.

18 **Michelle Oberman, J.D.** is a Professor of Law at Santa Clara University College
19 of Law and is an internationally recognized scholar on the legal and ethical issues
20 surrounding adolescence, pregnancy, and motherhood. Professor Oberman presently
21 works on issues pertaining to women's reproductive health and the law in Latin America.
22 Her 2008 book, *When Mothers Kill: Interviews from Prison*, won the Outstanding Book
23 Award from the Academy of Criminal Justice Studies.

24 **Margaret Spinelli, M.D.** is an Associate Professor of Clinical Psychiatry at the
25 College of Physicians and Surgeons of Columbia University, serving as the Director of the
26 Women's Program in Psychiatry, and a Research Psychiatrist at the New York State
27 Psychiatric Institute. Dr. Spinelli is the recipient of research awards from the National
28 Institutes of Mental Health for the study of depression and pregnancy, and her research

1 and publications have focused on psychiatric disorders during pregnancy and the
2 postpartum periods. Dr. Spinelli has worked tirelessly to educate medical faculty and
3 students, health care workers, judges, attorneys and law students regarding perinatal
4 mental illness and infanticide. Dr. Spinelli is the recipient of numerous awards, including
5 the 2004 Manfred S. Guttmacher Award from the American Psychiatric Association and
6 the American Academy of Psychiatry and the Law for outstanding literary contribution to
7 psychiatry and the forensic sciences.

8 **Teresa Twomey, J.D.** is an adjunct professor at Southern Connecticut State
9 University specializing in postpartum mental disorders and the law. Professor Twomey is
10 herself a survivor of postpartum psychosis and the author of the 2009 book,
11 *Understanding Postpartum Psychosis: A Temporary Madness*.

12 **III. ARGUMENT**

13 Arizona Rule of Criminal Procedure 32.1(e) provides that any person convicted of
14 or sentenced for a criminal offense may seek relief from the court if “[n]ewly discovered
15 material facts probably exist and such facts probably would have changed the verdict or
16 sentence.” Under Rule 32.1(e), newly discovered material facts exist if:

- 17 (1) The newly discovered material facts were discovered after trial.
- 18 (2) The defendant exercised due diligence in securing the newly discovered
19 material facts.
- 20 (3) The newly discovered material facts are not merely cumulative or used
21 solely for impeachment, unless the impeachment evidence substantially
22 undermines testimony which was of critical significance at trial such that
the evidence probably would have changed the verdict or sentence.

23 Ariz. R. Crim. P. 32.1(e).

24 Medical facts about postpartum psychosis have become broadly known since
25 King’s trial and conviction in 2002. Moreover, the evidence related to King shows that
26 she likely suffered from postpartum psychosis when she injured her child in late 2000 and
27 early 2001. Because King could not know right from wrong in the period she suffered
28

1 from postpartum psychosis, facts about postpartum psychosis probably would have
2 changed the jury's verdict had those facts been presented to the jury.

3 **A. Changes in the Knowledge and Understanding of Postpartum Psychosis**
4 **Since 2002**

5 **1. Medical Experts in Reproductive Mental Health Understand**
6 **Postpartum Psychosis Much More Fully Now Than in 2002**

7 No evidence of postpartum psychosis was presented at King's trial. If it had been,
8 the outcome of the trial would probably have been different.

9 At least since the mid-19th century, when French psychiatrist Louis Marce studied
10 the relationship between pregnancy, childbirth and subsequent maternal mental illness,
11 psychiatrists have studied postpartum mental illness. I. Brockington, R. Kumar,
12 *Motherhood and Mental Illness* (1982). Due to significant medical research as well as
13 education of mental health care professionals in the last ten years, the diagnostic criteria
14 for postpartum psychoses are now broadly known.

15 The period of reproductive transition is recognized as a time of biological and
16 chemical destabilization that increases a woman's vulnerability to psychiatric illness. R.
17 Kumar, *An Overview of Postpartum Psychiatric Disorders*, Nurses' Association of the
18 American College of Obstetricians and Gynecologists, *Clinical Issues in Perinatal and*
19 *Women's Health Nursing* (1990). Women with a predisposition to depression and anxiety
20 prior to pregnancy are at increased risk of continued or renewed symptoms during
21 pregnancy and up to 18 months postpartum. *Id.* As many as one in two women with a
22 predisposition to depression will develop depression during pregnancy and/or postpartum.
23 *Id.*

24 It is now understood that hormonal transition in childbirth triggers a neuro-
25 endocrine response producing changes in brain chemicals associated with mood. C.
26 Epperson, *Postpartum Major Depression: Detection and Treatment*, *American Family*
27 *Physician*, vol. 59, no. 8, at 2247-54 (2002); L. Gold, *Postpartum Disorders in Primary*
28 *Care*, *Women's Mental Health*, vol. 29, no. 1, at 27-40 (2002). The contractions that
produce a child are set in motion by a decline in the hormones that maintained the

1 pregnancy. Epperson (2002), *supra*. The sharp drop in hormone levels post-delivery can
2 precipitate labile mood and the ‘roller coaster’ effect reported by many women. C. Beck,
3 *Post-Traumatic Stress Disorder Due to Childbirth, The Aftermath*, Nursing Research, vol.
4 53, no. 4, at 216-24 (2004). While 80% of new mothers report the “baby blues,” or mood
5 swings, a significant number experience more serious mental disorders. *Id.* About 20% of
6 new mothers report depression/anxiety, and a small segment of the population, 0.1-0.2%,
7 develop a more extreme mental disorder called postpartum psychosis. *Id.*

8 During pregnancy, hormone levels can increase up to two-hundred fold during the
9 course of gestation, and within twenty-four hours the precipitous drop in estrogen and
10 progesterone produces a biological shock to the system. D. Sichel, M. Spinelli,
11 *Neurohormonal Aspects of Postpartum Depression and Psychosis*, *Infanticide:*
12 *Psychosocial and Legal Perspectives on Mothers Who Kill*, at 61-78 (2002). This abrupt
13 change in hormone levels alters neurotransmitters in the brain, creating mental health
14 symptoms, and the hormone withdrawal, with its profound impact on brain chemistry, has
15 the potential to trigger postpartum mental illness in women with a history of mental illness
16 prior to pregnancy and/or with significant life stressors such as the demands of caring for
17 the baby, sleep disruption, poor quality of interpersonal relations and support, unsolved
18 psychological conflicts, or exposure to violence. *See id.*

19 The perinatal mood and anxiety disorders that are not “just the blues” cover a wide
20 spectrum including prenatal depression and anxiety, postpartum depression, postpartum
21 anxiety disorders including obsessive-compulsive disorder, postpartum post-traumatic
22 stress disorder (PTSD) and panic disorder, and postpartum psychoses. Despite their
23 prevalence, perinatal mood and anxiety disorders are under-detected by health care
24 professionals, and, by 2002, more than half of the women afflicted were still not identified
25 or treated. Epperson (2002), *supra*; see also M. O’Hara, *Postpartum Depression: Causes*
26 *and Consequences* (1995); L. Miller, *Postpartum Mood Disorders* (1999). Stigma and
27 shame on the part of the new mother have traditionally acted as barriers to treatment. But
28 treatment has also been confounded by a historical lack of curriculum and training in this
area of women’s health. Thus, at the time King gave birth to her child in 2000, perinatal

1 mood and anxiety disorders were not systematically addressed through screening,
2 identification and treatment. Since then, identification of these disorders has improved
3 greatly through research and education.

4 Some of the recent research has focused on the origins of the development of
5 perinatal mental illness and the determinants of risk. Etiological factors include the
6 physiological and psychological adjustments of the perinatal transition, life history and
7 genetic predictors, and the social, cultural and economic environment in which a woman
8 lives. More recently, the health of a woman during pregnancy, the experience of
9 childbirth, and the health of the baby have been the subject of research. Women who
10 experience a medically complicated pregnancy, have an infant placed in the neonatal
11 intensive care unit, have a delay in access to the infant for bonding or nursing, or
12 experience a method of infant delivery that was not as planned have an altered perspective
13 of well-being, experience fears related to infant viability and future potential, and
14 frequently experience a delay in attainment of maternal self-confidence. C. Beck, *et al.*,
15 *The Many Faces of Postpartum Depression*, Journal of Obstetric, Gynecologic & Neonatal
Nursing, vol. 34, no. 5, at 569-76 (2005).²

16 All of these experiences can lead to profound depression and fear. *Id.* A woman is
17 subject to the ‘tremors’ of her early and recent life history including all recent physical and
18 emotional stressors, the social, economic and relationship circumstances that surround
19 childbirth, the events surrounding delivery of the baby, and genetic predictors including
20 family and personal history of depression, anxiety, bipolar disorder and other
21 psychological disorders. *Id.* Termed by Jeanne Watson Driscoll as the “earthquake
22 effect,” the new mother is subject to the convergence of various triggers that can
23 contribute to the development of one or more perinatal mental health disorders. D. Sichel,
24 *et al.*, *Women’s Moods: What Every Woman Must Know About Hormones, the Brain, and*
25 *Emotional Health* (1999). Postpartum depression is the most common.

26 Postpartum psychosis is the most lethal, for the mother, the child, or both. Upon
27 diagnosis of postpartum psychosis, immediate intervention focused on the return of mental

28 ² This and most of the medical articles cited in this section post-date King’s conviction.

1 wellness of the mother is of high importance, as the untreated mother is at increased risk
2 of acting on psychotic symptoms and harming herself and/or her infant. K. Yonkers, *et*
3 *al.*, *Diagnosis, Pathophysiology, and Management of Mood Disorders in Pregnant and*
4 *Postpartum Women*, *Obstetrics & Gynecology*, vol. 117, no. 4, at 961-77 (2011).

5 Postpartum psychosis is the rarest form of the perinatal mood and anxiety disorders,
6 afflicting one to two in 1,000 mothers, and of those afflicted, there is a 5% suicide rate and
7 4% infanticide rate. T. Twomey, S. Bennett, *Understanding Postpartum Psychosis: A*
8 *Temporary Madness* (2009). Because of the potential for harm, postpartum psychosis is
9 considered a medical emergency and intervention with mood stabilizers and antipsychotic
10 medication is the first line of defense. Yonkers (2011), *supra*. Women with postpartum
11 psychosis are usually hospitalized until stable and a medication regime is established. *Id.*
12 These women may harm their infant or themselves, but do not have the volition to do so.
13 J. Macfarlane, M. Spinelli, *Criminal Defense in Cases of Infanticide and Neonaticide,*
14 *Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill*, at 133-66 (2002).
15 Rather, command hallucinations in most cases authorize the mother to engage in behaviors
16 that are out of her control or intention. *Id.*

17 The diagnostic criteria for postpartum psychoses include cognitive disorganization,
18 bizarre behavior, lack of insight, hallucinations, and delusions of reference.³ K. Wisner, *et*
19 *al.*, *Prevention of Postpartum Depression: A Pilot Randomized Clinical Trial*, *American*
20 *Journal of Psychiatry*, vol. 161, no. 7, at 1290-92 (2004). Women with postpartum
21 psychosis report a heightened paranoia; in some cases the baby takes on a devilish visage,
22 and in other cases the mother feels like she is being watched and a power outside of her
23 takes over. *Id.* Postpartum psychosis can happen to any new mother, but bipolar mental
24 illness is a leading risk factor. *Id.*

25 There are several common themes to the biographical sketches written by women
26 who have experienced postpartum psychosis:

27 ³ A delusion of reference is a strongly held belief that random events, objects or behaviors
28 of others have a particular significance to oneself. P. Sutker, H. Adams, *Comprehensive*
Handbook of Psychopathology, at 540 (2001).

- 1 • fear of being found out and losing the baby they love
- 2 • fear that they are going crazy
- 3 • certainty that they are 'bad' mothers and are being punished
- 4 • certainty that there is another person living inside of them who is doing or
5 imagining the things they would not think of doing themselves
- 6 • desire to die
- 7 • desire to keep the baby safe
- 8 • altruism: saving the baby from Satan or other religious fixations
- 9 • extreme depression, hopelessness
- 10 • catatonia
- 11 • distance from loved ones
- 12 • paranoia: being watched or monitored, feeling that loved-ones are having affairs or
13 mean to hurt her
- 14 • hallucinations: commands from voices from within or outside herself, such as the
15 radio or TV
- 16 • impaired judgment and cognition: cannot think straight, perceptions are altered and
17 dark

18 Twomey (2009), *supra*. Author, psychologist and perinatal mood disorder expert

19 Shoshana Bennett summarizes the disorder by saying, "A mom with postpartum psychosis
20 may be operating in two realities simultaneously[;] . . . she understands what is expected
21 of her and what is considered normal. She may be completely rational one moment and
22 the next moment be in a psychotic state." *Id.*

23 It is generally understood that a variety of circumstances will increase a woman's
24 vulnerability to postpartum psychosis. These include genetics, predisposing risk factors
25 including family and personal history of bipolar disorder, schizophrenia, affective
26 disorders, current life stressors, hormonal sensitivity and neuro-endocrine changes. *Id.* It
27 is now understood that an underlying (and undiagnosed) bipolar disorder is present in at
28 least 50% of cases of postpartum psychosis. *Id.* The Diagnostic and Statistical Manual of
Psychiatric Disorders IV (DSM-IV), in effect at the time of King's trial, includes
postpartum psychoses under bipolar disorder and atypical psychoses with a postpartum
specifier. *Id.*

Important medical research and clinical reporting of postpartum mental disorders
have been abundant in the last ten years, and especially in the last several years. *See, e.g.,*

1 Yonkers (2011), *supra*; H. Woolhouse, *et al.*, *Seeking Help for Anxiety and Depression*
2 *After Childbirth: Results of the Maternal Health Study*, Archives of Women's Mental
3 Health, vol. 12, at 75-83 (2009); K. Wisner, *et al.*, *Major Depression and Antidepressant*
4 *Treatment: Impact on Pregnancy and Neonatal Outcomes*, American Journal of
5 Psychiatry, vol. 166, no. 5, at 557-66 (2009); E. Moehler, *et al.*, *Maternal Depressive*
6 *Symptoms in the Postnatal Period Are Associated with Long-Term Impairment of Mother-*
7 *Child Bonding*, Journal of Women's Mental Health, vol. 9, at 273-78 (2006); Beck (2005),
8 *supra*; Wisner (2004), *supra*; Sichel & Spinelli (2002), *supra*; Epperson (2002), *supra*;
9 Gold (2002), *supra*. For example, only beginning in 2010 did the American Academy of
10 Pediatrics publish its recommendations for pediatricians to incorporate postpartum
11 depression recognition and management into their practices. M. Earls, *et al.*, *Clinical*
12 *Report--Incorporating Recognition and Management of Perinatal and Postpartum*
13 *Depression Into Pediatric Practice*, Am. Academy of Pediatrics (Nov. 5, 2010),
14 <http://aappolicy.aappublications.org/cgi/reprint/pediatrics;126/5/1032.pdf>. This research
15 was not available, much less disseminated to the medical community, at the time of King's
16 trial in 2002.⁴ Indeed, at the time of King's arrest and subsequent trial, the community of
17 experts in this area of reproductive mental health was in its infancy in the United States
18 and non-existent in Arizona.

19 **2. The *Amici Curiae* and Others Have Worked Diligently to Educate**
20 **the Medical Community and Public Regarding Postpartum**
21 **Mental Disorders**

22 Because postpartum disorders are identifiable and treatable, the *amici curiae*
23 organizations and individuals, among many others, believe that increasing awareness of
24 postpartum disorders in both the medical community and the public greatly improves the
25 potential for the prevention of tragic consequences such as those seen in King's case. As a
26

27 ⁴ Teresa Twomey, in *Understanding Postpartum Psychosis: A Temporary Madness*,
28 remarks that a Google search of "postpartum psychosis" yielded no hits in the year 2000,
and 11,000 hits by the year 2008.

1 result, these organizations have worked diligently over the last ten years to educate the
2 medical community and the public regarding postpartum disorders.

3 Among the *amici curiae*, PSI has conducted training regarding postpartum
4 disorders to over 3,000 medical professionals, and it currently receives over 1,000
5 telephone requests per month for information related to postpartum disorders. Likewise,
6 since 2005, APWC has trained 600 health care providers in Arizona regarding postpartum
7 disorders. Through grants from a Minnesota foundation called Jenny's Light established
8 in memory of a woman who suffered from postpartum psychosis and took the life of her 2
9 month old son and herself, APWC has also supported the development of a curriculum for
10 doctor's offices, mother's groups and agencies working with mother's groups and
11 pregnant and postpartum women, distributed brochures in English and Spanish, and
12 provided a telephone "warmline" to refer callers to local postpartum disorder resources.
13 For its part, in 2011, TPDC opened a center in Tucson called Mother's Oasis that offers
14 free services to pregnant and postpartum women and promotes awareness of postpartum
15 disorders.

16 Recently, the U.S. Department of Health and Human Services began maintaining a
17 web page that explains postpartum depression and postpartum psychosis and provides
18 resources for those experiencing symptoms of these postpartum disorders. *Depression*
19 *During and After Pregnancy Fact Sheet*, www.womenshealth.gov (2012),
20 [http://www.womenshealth.gov/publications/our-publications/fact-sheet/depression-](http://www.womenshealth.gov/publications/our-publications/fact-sheet/depression-pregnancy.cfm)
21 [pregnancy.cfm](http://www.womenshealth.gov/publications/our-publications/fact-sheet/depression-pregnancy.cfm). In 2010, the Journal of the American Medical Association first posted a
22 patient web page regarding postpartum depression that includes a discussion of the
23 symptoms and treatment of postpartum psychosis. *Postpartum Depression*, Journal of the
24 American Medical Association Patient Page, vol. 304, no. 15 (Oct. 20, 2010),
25 <http://jama.ama-assn.org/content/304/15/1736.full.pdf>. Likewise, the website of the
26 American Psychiatric Association was recently revised to include a page describing
27 postpartum depression and postpartum psychosis. *Postpartum Depression*,
28 www.healthyminds.org (2012), <http://www.healthyminds.org/Main-Topic/Postpartum->

1 Depression.aspx. And, in 2010, the National Association of Social Workers published its
2 guide, entitled *Postpartum Mood Disorders, A Guide for Medical, Mental Health, and*
3 *Other Support Providers*. Zittel (2010), *supra*. In 2009, even the television network CBS
4 participated in educating the public about postpartum disorders, partnering with PSI to
5 create CBS Cares public service announcements about postpartum depression. *See*
6 <http://www.youtube.com/watch?v=XSkW6W3iSOQ>. In sum, since King's trial in 2002,
7 organizations of all types have made substantial efforts to educate the medical community
8 and the public regarding postpartum disorders, and most of this activity has occurred in the
9 last several years.

10 **3. Since King's Conviction, Congress and State Legislatures Have**
11 **Enacted or Considered Enacting Legislation Regarding**
12 **Postpartum Disorders**

13 After giving birth to a daughter in 2001, an Illinois woman, Melanie Blocker-
14 Stokes, developed postpartum psychosis and jumped from a 12-story window ledge to her
15 death. Office of Leg. Policy & Analysis, Leg. Updates, 108th Cong. (2003),
16 <http://olpa.od.nih.gov/legislation/108/pendinglegislation/postpartum.asp>. As a result,
17 Illinois Congressmen Bobby Rush and Richard Durbin introduced legislation in 2003 to
18 fund the U.S. Department of Health and Human Services to provide for research and
19 services for individuals with postpartum depression and psychosis. *Id.* The legislation
20 was actively supported by New Jersey Congressman Rush Holt and New Jersey First Lady
21 Mary Jo Codey, who herself suffered from postpartum depression. *Melanie's Battle: The*
22 *Hidden Plague of Postpartum Psychosis and Depression* (2010), [http://www.](http://www.melaniesbattle.org/legislation.html)
23 [melaniesbattle.org/legislation.html](http://www.melaniesbattle.org/legislation.html). Finally, as part of the 2010 Patient Protection and
24 Affordable Care Act, the Melanie Blocker-Stokes "Mother's Act" became U.S. law. *Id.*

25 Likewise, state legislatures including those in California, Oregon, Washington,
26 Minnesota, Wisconsin and Massachusetts have enacted or are considering enacting
27 legislation promoting awareness, education, identification and treatment of postpartum
28 mental disorders. In 2006, a New Jersey law went into effect requiring the screening of

1 women who have recently given birth for postpartum mental disorders and providing for
2 public education related to postpartum mental disorders. *New Jersey Law Requiring*
3 *Postpartum Depression Screening Goes Into Effect*, Medical News Today (Oct. 17, 2006),
4 <http://www.medicalnewstoday.com/releases/54096.php>.

5 In Arizona, APWC has advocated for state legislation regarding postpartum mental
6 disorders since its formation in 2005. Working primarily with State Senator Linda Lopez,
7 a 2008 House Bill (H.B. 2686) and a 2009 Senate Bill (S.B. 1312), providing for the
8 development of the Perinatal Mood Disorders Study Committee to determine prevalence
9 and needs in Arizona related to postpartum mood disorders, were unanimously passed by
10 the Health Committee, but more pressing legislative priorities both years prevented the
11 bills from going any further. *See* H.B. 2686, 48th Ariz. Leg. (2008),
12 <http://www.azleg.gov/legtext/48leg/2r/bills/hb2686h.pdf>; S.B. 1312, 49th Ariz. Leg.
13 (2009), <http://www.azleg.gov/legtext/49leg/1r/bills/sb1312p.pdf>.

14 Legislation in other countries has gone much further. England enacted its
15 Infanticide Act in recognition of the potential for mental, physiological and emotional
16 instability in women during childbirth and the postpartum. Under this legislation, a
17 maximum conviction of manslaughter accompanies the killing of an infant of up to one
18 year of age by its mother. M. Oberman, M. Spinelli, *A Brief History of Infanticide and the*
19 *Law*, *Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill*, at 3-18
20 (2002). At least 20 other countries have similar laws. “[The English] attitude toward the
21 mental health risks of postpartum women has been established in most westernized
22 countries, particularly the countries that are the most up-to-date on caring for [postpartum
23 mood disorders] (such as Australian and New Zealand), with mandatory mental health
24 intervention and short sentences compared with those of people convicted of manslaughter
25 [references omitted].” Zittel (2010), *supra*, *Postpartum Psychosis*, at 92-94.

1 **B. The Impact that the Knowledge and Understanding of Postpartum**
2 **Psychosis Would Have Had on King’s Conviction**

3 Under Arizona Revised Statutes (“A.R.S.”) § 13-502, a criminal defendant may be
4 found guilty except insane if she “was afflicted with a mental disease or defect of such
5 severity that the person did not know the criminal act was wrong.” Had the evidence been
6 presented to the jury that King was suffering from postpartum psychosis when she injured
7 her baby in late 2000 and early 2001, the jury probably would have rendered a verdict of
8 guilty except insane, because King could not know right from wrong in the period she
9 suffered from this disorder.

10 **1. The Evidence Shows that King Likely Suffered from Postpartum**
11 **Psychosis and Thus Could Not Have Understood the**
12 **Consequences of Her Actions⁵**

13 Substantial biological, psychological, social and cultural factors contributed to the
14 risk that King would suffer from postpartum psychosis in the perinatal transition. First of
15 all, King was biologically and genetically pre-disposed to mental illness. King has
16 maternal relatives with a history of severe mental illness, and King’s mother was
17 hospitalized for mental illness. King herself acknowledges that depression followed her
18 throughout her life. Following puberty, she recounts that she suffered extreme mood
19 swings during the premenstrual cycle, a hormonal sensitivity disorder known as
20 premenstrual dysphoric disorder.

21 Secondly, the trauma of King’s childhood predisposed her to postpartum psychosis.
22 King’s mother often lived out of a car, and she had a series of male companions, one of
23 whom sexually abused King. King also recalls that she and her brothers were suddenly
24 removed from school by Child Protective Services and placed in a series of foster care

25 _____
26 ⁵ Unless otherwise noted, the facts are taken from the July 2002 Trial Transcript for Hope
27 King, the September 2002 Sentencing Transcript for Hope King, the Maryvale Hospital
28 Medical Record for Hope King, the Medical Records of Correctional Health for Hope
King, and the Affidavits of Hope King, Glenelle King and Jonette Simpson, all referred to
in the Rule 32 Petition for Post-Conviction Relief on Behalf of Hope King filed by the
Arizona Justice Project concurrently with this brief.

1 settings. During this period, King always wished to be reunited with her mother. When
2 she finally was, her mother was still living with the male companion who had abused her.

3 Thirdly, the circumstances surrounding King's pregnancy and childbirth
4 predisposed her to postpartum psychosis. King and Kevin Bailey became high school
5 sweethearts, and she moved in with Bailey and his mother. King and Bailey were living in
6 their own apartment when she became pregnant. Although she had always dreamed of
7 having a child, hoping to be a good mother and offer more stability than she had
8 experienced, she was frightened of becoming a mother at that time in her life. She and
9 Bailey fought regularly, their economic base was weak, and she had no social support or
10 close relatives.

11 In her ninth month of pregnancy, King learned that her mother had a heart attack
12 and was in a coma. King was unable to travel out of state to see her mother because her
13 date of confinement was close. Bailey had also promised to marry her in her ninth month,
14 but that did not come to fruition. King experienced an induced labor following the
15 frightening news about her mother's precarious state. The delivery of her daughter was
16 followed by a massive hemorrhage, and King was rushed to the operating room for an
17 emergency hysterectomy, a life-saving intervention.

18 King reports no memories of the weeks following the birth of her daughter Kyla.
19 She then recalls that she was allowed to see Kyla but that she could not hold her. Bailey's
20 mother came from out of state to help with Kyla for one week. King was re-hospitalized
21 for a surgical infection and placed on pain medication and intravenous antibiotics. At that
22 time, Bailey's mother noted that King was "not the Hope I knew. She was all blown up,
23 looking off in to the distance, sad, not there." King recalls that she was too weak to hold
24 Kyla, and she felt afraid and overwhelmed.

25 King eventually recovered from the surgical infection and assumed care of her
26 daughter. Her hopes of breastfeeding were dashed when her obstetrician told her she
27 could not due to the heavy medication for the infection. King recalls that, for a few
28 months, she embraced the role of being the perfect mother. She wanted Kyla to have the

1 best care possible and fussed over her. She reports that she became obsessed with the idea
2 that only she could adequately care for Kyla, so Bailey did not participate in the routines
3 of baby care. King began to believe that nothing less than perfect would be acceptable in
4 the care of her baby. She recalls that several months after her birth, she became exhausted
5 with the daily aspects of “making everything right.” She was alone, isolated from
6 mentorship and social support, and lacking a stable and supportive relationship with
7 Bailey. She and Bailey did not close the gaps in their relationship and, instead, grew
8 increasingly distant. King recalls that he was at work all day and in the evening would
9 have several beers and watch TV and otherwise remain apart from his family.

10 Three months after her post-delivery hospitalization, King received the tragic news
11 that her grandmother had died. By the fourth month postpartum, King recognized an
12 intensifying depression and higher level of fear and anxiety, growing concerns about
13 Kyla’s safety, and intrusive thoughts of hurting Kyla. To compensate for her fearful
14 thoughts, King believed she had to limit her contact with Kyla, and King would keep a
15 closed door between them except for necessary times of feeding and changing. In her
16 mind, she reports, she was protecting Kyla from herself. She recalls that her obsessions
17 turned Kyla into a threat, and she would see flashing images of Kyla as a demon. By the
18 sixth month postpartum, King reports she heard a voice that commanded her to bite Kyla.
19 When she was lucid, she tried to make the thoughts go away; they scared her, and she did
20 not report them because she was afraid she would lose Kyla.

21 Finally, in search of help, King called Value Options, the Arizona Health Care Cost
22 Containment System (AHCCCS) behavioral health program, and she was told she would
23 get a call back the following day. No one returned her call. She reports that she gave in to
24 the voice she heard, and she injured Kyla on several occasions.

25 Following her arrest, a psychiatric evaluation suggested Major Depression with
26 psychotic features, and King was placed on medication for depression, anxiety and
27 psychosis, but King did not receive a postpartum mental health screening or obtain
28 postpartum mental health care. A more complete evaluation was filed in January 2002, by

1 Dr. Richard Rosengard, but it also did not include an evaluation of King for postpartum
2 mental illness. Her diagnoses included General Anxiety Disorder, Obsessive Compulsive
3 Disorder, Post-Traumatic Stress Disorder, and Major Depressive Disorder. Although Dr.
4 Rosengard suggested a follow-up psychiatric evaluation, it appears none was not provided
5 to King. See C. Hibbert, Psy.D., *Comprehensive Psychological Assessment, Hope L. King*
6 (Dec. 13, 2010).

7 The facts reported by King point to the conclusion that King suffered from
8 postpartum psychosis. Prior to pregnancy and childbirth, King did not have the symptoms
9 she describes in the months following Kyla's birth. The pregnancy and childbirth
10 triggered postpartum psychosis. The known symptoms of postpartum psychosis that King
11 experienced included: hallucinations (King heard a voice commanding her to do things,
12 including "bite her"), delusions (King felt like another entity took over her body and made
13 her do things to hurt Kyla), belief that her child was evil, paranoia (King felt like she was
14 being watched), obsessive thoughts about harming her child, waxing and waning feelings
15 (King would feel a confused state followed by lucidity), disorganized thinking, and bizarre
16 behavior.

17 King also had numerous pre-existing risk factors for postpartum mental illness,
18 including: family history of postpartum mental illness, family history of schizophrenia
19 and depression, personal history of depression, premenstrual dysphoric disorder, unstable
20 mother, separation from mother, significant disruption to early attachment, foster care
21 placement, sexual abuse, and unplanned pregnancy. Furthermore, King was exposed to
22 additional risk factors around the traumatic circumstances of the pregnancy and childbirth,
23 including: news of her mother's critical health condition in her ninth month of pregnancy,
24 traumatic outcome of childbirth, hysterectomy, re-hospitalization for infection, inability to
25 breast feed, lack of early engagement/bonding with her child, death of her grandmother
26 shortly after childbirth, perfectionist tendencies, unrealistic expectations, undiagnosed and
27 untreated anxiety with obsessive-compulsive behavior, depression, post-traumatic stress
28 disorder, lack of social support, isolation, and unstable relationship with her partner.

1 In sum, when King's symptoms and circumstances are applied to the science of
2 postpartum disorders as it is now understood, it is clear that King likely suffered from
3 postpartum psychosis when she injured Kyla. See C. Hibbert, *Comprehensive*
4 *Psychological Assessment, Hope L. King*. It can certainly be said that, had the jury heard
5 evidence of the science of postpartum psychosis, it probably would have reached a
6 different verdict for King.

7 **2. A Diagnosis of Postpartum Psychosis Affected the Verdict in the**
8 ***Yates* Trial, Among Others**

9 The findings of other courts in similar cases provide strong support for a conclusion
10 that the jury would probably have reached a different verdict if, at the time of King's trial,
11 facts regarding postpartum psychosis had been available. Most famously, in 2006, in a
12 case with substantial similarity to King's, Andrea Yates was found guilty except insane
13 under Texas law for killing her five children while suffering from postpartum psychosis.
14 See G. L. Sims, *The Criminalization of Mental Illness: How Theoretical Failures Create*
15 *Real Problems in the Criminal Justice System*, 62 Vand. L. Rev. 1053, 1054 (2009).
16 Likewise, in 2009, after studying postpartum psychosis and applying it to the case before
17 him, a Pennsylvania judge sentenced the defendant and mother Lauren Shockey to
18 probation with mental health treatment for throwing her 8-month-old son to the asphalt.
19 K. Stone, *Pennsylvania Mom Receives Probation After Harming Infant During Psychosis*,
20 *Postpartumprogress.com* (May 6, 2009), [http://postpartumprogress.com/postpartum-](http://postpartumprogress.com/postpartum-psychosis-shockey-receives-probation-after-harming-infant-during-psychosis)
21 [psychosis-shockey-receives-probation-after-harming-infant-during-psychosis](http://postpartumprogress.com/postpartum-psychosis-shockey-receives-probation-after-harming-infant-during-psychosis). And, in
22 2010, a Michigan jury found that the defendant and mother Shontelle Cavanaugh suffered
23 from postpartum psychosis and was temporarily insane when she smothered and killed her
24 9-month-old daughter. S. Harrison, *Shontelle Cavanaugh Found Not Guilty By Reason of*
25 *Insanity in Baby's Death*, M Live (May 11, 2010), [http://www.](http://www.mlive.com/news/detroit/index.ssf/2010/05/shontelle_cavanaugh_found_not.html)
26 [mlive.com/news/detroit/index.ssf/2010/05/shontelle_cavanaugh_found_not.html](http://www.mlive.com/news/detroit/index.ssf/2010/05/shontelle_cavanaugh_found_not.html).

1 **C. The Interests of Justice in Granting Post-Conviction Relief to King**

2 **1. Courts Have Granted Post-Conviction Relief in Analogous Cases**

3 The Court would not be entering new territory by granting post-conviction relief to
4 King. In 2009, Illinois Governor Pat Quinn pardoned Debra Gindorf, who allegedly
5 suffered from postpartum psychosis when she killed her children in 1985, and the
6 Governor released her from prison. E. Zorn, *Gov. Quinn Frees Debra Gindorf, Convicted*
7 *of Killing Two Children While Suffering Severe Post-Partum Illness*, Chicago Tribune
8 (May 5, 2009), [http://articles.chicagotribune.com/2009-05-05/news/0905040602_1_drunk-](http://articles.chicagotribune.com/2009-05-05/news/0905040602_1_drunk-driver-narrative-counselor)
9 [driver-narrative-counselor](http://articles.chicagotribune.com/2009-05-05/news/0905040602_1_drunk-driver-narrative-counselor).

10 In addition, Arizona courts have granted post-conviction relief in the similar
11 context of post traumatic stress disorder (PTSD). *See State v. Bilke*, 162 Ariz. 51, 53-54,
12 781 P.2d 28, 30-31 (1989) (finding that defendant's PTSD was not diagnosed until well
13 after his trial and that, had PTSD evidence been presented at trial, defendant may well
14 have received a different sentence).

15 **2. King Has Recovered and Is Not a Threat to Society⁶**

16 The recent psychological examination of King shows that she has recovered from
17 the mental disorder of postpartum psychosis. C. Hibbert, *Comprehensive Psychological*
18 *Assessment, Hope L. King*. Indeed, as discussed above, King's psychosis arose from the
19 hormonal, psychosocial and other stressors during the year following childbirth, but, as
20 expected, she recovered once the postpartum timeframe passed. She is therefore not a
21

22 _____
23 ⁶ A poem written by King in 2009, entitled "A Society Taboo," demonstrates her
24 awareness of her acts. The poem opens, "A world full of danger, I vowed to keep her
25 safe. A Mother's promise made, the moment I saw her face. This little miracle so
26 beautiful, did she really come from me? But these moments of awe and amazement, were
27 so short lived you see. A second nature dwelled within, that neither of us knew about. For
28 one day I loved her dearly, and then the monster inside came out. Daily routines of
nurturing and love, I could not stand anymore. Her only protection lying alone, behind a
closed and locked door. I want to go away and leave her there, leaving no note behind.
These bizarre thoughts and actions assured me, I was losing my mind."

1 threat to society or to herself. Moreover, because of the post-delivery hysterectomy, King
2 can no longer give birth to a child.

3 **IV. CONCLUSION**

4 For all of the foregoing reasons, the *amici curiae* ask the Court to give Hope
5 Lynette King relief from her conviction and sentence based on what the medical
6 community now understands about postpartum psychosis, which the evidence shows King
7 likely suffered from in late 2000 and early 2001.

8
9 DATED this 2nd day of April, 2012.

10 **LEWIS AND ROCA LLP**

11
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21 with the Clerk of the Maricopa County Superior
22 Court, and copy was hand-delivered this
2nd day of April, 2012 to:

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