IN THE SUPREME COURT OF OHIO

STATE, ex rel. THE CINCINNATI ENQUIRER, a division of the GANNETT SATELLITE NETWORK, Inc.,	:	
Relator,	:	**Case No. 06-2239**
v.	:	
HELEN JONES-KELLEY, DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	**Original Action in Mandamus**
Respondent.	:	

BRIEF OF AMICI CURIAE IN SUPPORT OF RESPONDENT BY OHIO ASSOCIATION OF CHILD CARING AGENCIES AND OHIO FAMILY CARE ASSOCIATION

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INTEREST OF AMICI CURIAE

The Ohio Association of Child Caring Agencies ("OACCA") is a statewide association of private and public agencies that provides a wide array of services to children and families. Association members provide services to thousands of children and families, allowing them to achieve and maintain healthy relationships, independence and productivity. These services include foster care for children experiencing the trauma of child abuse or neglect, finding adoptive families for children and providing post-adoptive support, emergency shelter care for children whose families are in crisis, respite care for families with children in need of intensive support, counseling services for children and families and highly-structured, closely supervised educational services for children who cannot attend public schools. OACCA's mission is to promote and strengthen an integrated network of high-quality services for Ohio's children and their families through advocacy, education, and support of member agencies. The safety of the foster care network is a significant issue for OACCA and all its member agencies.

The Ohio Family Care Association ("OFCA") serves as a statewide voice for children and families involved in adoptive, foster, kinship and respite care. Its mission is to strengthen the image, rights, and status of adoptive, foster and kinship families, to encourage the recruitment and retention of adoptive, foster, kinship and respite families, and to advocate for improved education and supportive services to adoptive, foster, respite and kinship families. The public disclosure of personal information about foster care providers undermines the privacy rights of foster care families and the ability to recruit and retain foster families.

A core value of both these associations, and their members, is that children must be kept safe. More often than we wish to believe, it is those responsible for their safety that are the most dangerous to children – their families. Children are placed with foster families to protect them while their birth families learn how to do so themselves. If the families cannot (or will not) learn this critical lesson, the children remain in the protective custody of foster care until new permanent families can be found to take on this responsibility.

Exposing personal information about foster families to the public will thwart the amici associations' efforts to protect children and will be harmful to foster placement. Child protection workers tell story after story of birth families snatching children and stalking, threatening and physically assaulting foster parents. These foster parents are volunteers who receive public assistance to reimburse them, at least in part, for the expenses they incur to provide safe, nurturing homes to children who have been hurt or abandoned. Making their personal information public will endanger their safety as well as that of their charges, and will have a chilling effect on the recruitment and retention of volunteer foster families.

The amici associations share the Respondent's concern that to make foster parent information public is to endanger children. The safety of these dependent children should be the most important consideration – indeed, it should be the only consideration.

Proposition of Law.

> **Records containing the names and addresses of foster care parents maintained by the Ohio Department of Job and Family Services are required to be kept confidential by federal and state law and, therefore, are exempt from disclosure under the Ohio Public Records Law pursuant to R.C. 149.43(A)(1)(v).**

The Ohio Public Records Law, R.C. 149.43 expressly excludes from the requirements for public disclosure records "the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v). Both state and federal law prohibit the release of personal information about foster care parents, including their names and addresses.

R.C. 5101.27 prohibits any person or governmental entity from disclosing "any information regarding a public assistance recipient for any purpose not directly connected with the administration of a public assistance program." This statute is an integral part of the law governing Respondent Ohio Department of Job and Family Services ("ODJFS") and its regulatory authority over foster care placement.

The term "public assistance recipient" as used in R.C. 5101.27 is a specially defined term. It is defined by R.C. 5101.26(F) as follows:

> "Public assistance" means financial assistance, medical assistance, or social services provided under a program administered by the department of job and family services or a county agency pursuant to Chapter 329., 5101., 5104., 5107., 5108., 5111., or 5115. of the Revised Code or an executive order issued under section 107.17 of the Revised Code.

Foster care parents are "public assistance recipients," as specially defined by R.C. 5101.27, because they receive foster care maintenance payments and related

social services support on behalf of eligible children from county public children services agencies ("PCSAs") through a program administered by ODJFS and the counties pursuant to R.C. Chapter 5101. The PCSAs make foster care maintenance payments to foster care parents and are then reimbursed by the State through the Title IV-E program administered in accordance with R.C. 5101.141. "Title IV-E" refers to Title IV-E of the Social Security Act, 94 Stat. 501, 42 U.S.C. 670 (1980), as amended. The purpose of the Title IV-E program is to reimburse States for a portion of the cost of providing foster care for abused, neglected and dependent children and adoption assistance for children with special needs. 42 U.S.C. § 670.

While the dependent child is the *beneficiary* of funds and services made available through Title IV-E, the foster care parent is the *recipient,* on behalf of the child in his or her care, of the assistance provided. The funds disbursed through the Title IV-E program enable the State (or in this case the counties) to compensate the foster care parent, *at least in part,* for providing supervision, food, clothing, shelter, school supplies and other necessities or incidentals for the child in foster care. 42 U.S.C. § 675(4)(A). Foster care maintenance payments are not paid to, or received by, the child, they are paid to the foster care parent "with respect to" or "on behalf of" the child. 42 U.S.C. § 672(a) & (b)(1). It is the foster care parent who has the obligation to provide for the child and it is this individual who receives, on behalf of the child, the payments which assist him or her at least in part to take on this important responsibility. Section 672(b)(1) expressly recognizes this distinction between the child, as the beneficiary of the foster care maintenance assistance, and the foster parent, as the recipient. It provides:

> Foster care maintenance payments may be made under this part [42 USC §§ 670 et seq.] only on behalf of a child described in subsection (a) of this section who is –
>
> (1) in the foster family home of an individual, whether the payments therefore are made to such individual or to a public or nonprofit private child-placement or child-agency . . . .

Foster care parents also are the recipients of public assistance in the form of services provided to them, and the children they care for, under individual case plans. The Title IV-E case plan includes a component for "assuring that services are provided to the ... foster parents in order to ... address the needs of the child while in foster care." 42 U.S.C. § 675(1)(B).

Thus, by enacting R.C. 5101.27, the General Assembly exempted information maintained by the ODJFS relating to foster care parents, as well as the children they protect, from the Public Records Law. This information is required to be kept confidential except for the specific disclosures expressly allowed in R.C. 5101.27(B) or 5101.28, 5101.29 or 5101.30. The permitted disclosures are narrowly drawn. The unrestricted general disclosure of information about foster care parents is not a permitted disclosure.

There is no mystery why the General Assembly adopted the confidentiality requirements in R.C. 5101.27. Federal law requires the States to adopt such confidentiality requirements in order to be eligible to receive funds and administer public assistance programs under the Social Security Act. This confidentiality requirement is one of the conditions for States to be eligible to receive funds under Title IV-E for foster care maintenance payments and related services. Pursuant to 42 U.S.C. § 671(a)(8), in order to be eligible to receive payments for foster care

maintenance, a State must have an approved plan, supported by State law, which, among other things, limits the disclosure of information concerning "individuals assisted under the Plan" to certain narrowly drawn uses related to program administration, enforcement and improvement. Section 671(a)(8) states:

> **(a) Requisite features of State plan.** In order for a State to be eligible for payments under this part [42 USCS §§ 670 et seq.], it shall have a plan approved by the Secretary which –
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> * * *
>
> (8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely.

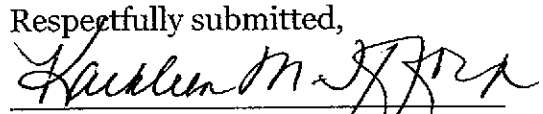
See also 45 C. F. R. § 1355.21(a)("The State plans for Title IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 671(a)(8) of the Act.").

Again, the term "individuals assisted under the State plan" for purposes of §671(a)(8) includes not only the child beneficiary but also the foster care parent who receives financial assistance on behalf of the child to defray in part the costs of providing food, clothing, shelter and other necessities and incidentals for the child in his or her care, § 675(4)(a), and who also receives social service support pursuant to an individual case plan, § 675(1)(B).

Thus, the names and address of foster care parents, as well as other information maintained by ODJFS about foster care parents receiving foster care maintenance payments and social services under Title IV-E, is required to be kept confidential by both federal and state law. Any contrary holding by this Court could result in rendering Ohio ineligible to participate in the Title IV-E foster care program, thereby depriving needy and deserving children who live with foster care families of funds necessary to provide food, clothing, shelter, school supplies, and other incidentals. That clearly is not what the General Assembly intends nor what is in the best interest of children, their foster care families, or the public generally.

The Court should deny Relator's request for a writ of mandamus because the information it seeks is required to be kept confidential by both State law, R.C. 5101.27, and federal law, 42 U.S.C. § 671(a)(8). Denying the writ, and preserving the confidentiality of this information is also in the public interest. Safeguarding the privacy of foster care parents from unrestricted public disclosure of their identity and locations will protect the safety of children in foster care and the dedicated foster parents who care for them and provide this vital public service.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel certifies that this Brief of Amici Curiae was served by U.S, mail, postage pre-paid this 15th day of October, 2007, on the following counsel:

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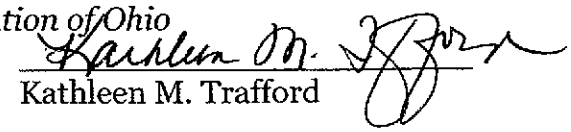

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