

IN THE JUVENILE COURT OF TWIGGS COUNTY  
STATE OF GEORGIA

In the Interest of:

D.R.,

A Child.

CASE NO.: 143-2018j-019

Twiggs County, State of GA  
Clerks Office, Superior Court

Filed in Office 29 day of June  
2018, At 9:25 A.M.-P.M. O'Clock  
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Day of \_\_\_\_\_

12/19/18  
Deputy Clerk of Superior Court

**MOTION OF THE ACLU OF GEORGIA FOR LEAVE TO FILE BRIEF OF AMICUS  
CURIAE**

The American Civil Liberties Union Foundation of Georgia ("ACLU of Georgia") respectfully requests leave of Court to file the attached Brief in Support of Suzeanna and Matthew Brill ("the Brills"). The ACLU of Georgia is committed to helping the Brills protect their fundamental right to parent, obtain the medicine they need for their chronically ill son, and remain out of the criminal justice system, as they pose no danger to public safety. As such, the ACLU of Georgia respectfully requests that the Court consider the arguments set forth in the attached brief.

For the convenience of the Court, a proposed Order granting this Motion is attached.

Respectfully submitted this 29th day of June, 2018.

/s/ Kosha S. Tucker

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing pleading by hand delivery to all counsel of record:

Special Assistant Attorney General for the Division of Family and Children Services

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Presently unknown parties, including a Guardian Ad Litem or parent, whom the undersigned may later ascertain, will be served accordingly.

The 29th day of June, 2018.

/s/ Kosha S. Tucker



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**BRIEF OF AMICUS, THE ACLU OF GEORGIA, IN SUPPORT OF SUZEANNA AND  
MATTHEW BRILL**

Suzeanna and Matthew Brill (“the Brills”) have done everything in their power to protect and care for their chronically ill 15-year-old son, D.R. Unwilling to helplessly watch their son struggle to live, the Brills did what any parent would: they searched for and found the best course of treatment to effectively manage D.R.’s epilepsy. The treatment was marijuana, and D.R. went from having several seizures per day to zero for 71 days straight. As discussed below, the Brills are D.R.’s rightful caregivers, who have acted in his best interests and have caused him no harm. Additionally, in caring for D.R., the Brills’ decision to treat his epilepsy with medical marijuana was based on the same logic followed by the Georgia Legislature in legalizing THC oil for the treatment of epilepsy and other serious medical conditions. Finally, until Georgia ends its over-criminalization and demonization of marijuana use and joins the 31 other states that have adopted comprehensive medical marijuana reform, loving parents like the Brills and people in need of serious medical help will continue to needlessly suffer. While this Court does not have the power to enact comprehensive medical marijuana reform, it should at least protect the Brills from the harsh excesses of Georgia’s outdated regime and reunify them with their child.

**I. PARENTS HAVE A FUNDAMENTAL RIGHT TO CARE FOR THEIR CHILD AS THEY SEE FIT, ABSENT A CLEAR SHOWING OF HARM CONSTITUTING ABUSE OR NEGLECT.**

As this Court is well aware, all parents have the fundamental right and liberty interest to ~~make their own decisions concerning the care, custody, and control of their children, absent a~~ threshold finding of objective, substantiated harm constituting abuse or neglect. *See, e.g., Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Parham v. J. R.*, 442 U.S. 584 (1979). The state may not merely disagree with how a parent chooses to raise her child, no matter how repugnant to others' personal opinions about what they think is better or best for the child. *Troxel v. Granville*, 530 U.S. 57, 71 (finding there must exist "more than a simple disagreement between Washington Superior Court and Granville concerning her children's best interests"). As the Georgia Supreme Court has recognized, the parental right to the custody and control of one's child is "a fiercely guarded right . . . that should be infringed upon only under the most compelling circumstances." *Clark v. Wade*, 273 Ga. 587, 596-97 (2001).

A parenting decision that technically violates a state law does not automatically constitute *per se* abuse or neglect. Otherwise, a parent who exceeds the speed limit by 1 m.p.h. could have their child taken away from them. Rather, the standard is based on actual evidence of objective substantial harm, allowing the state to only intervene with a parent's fundamental right when it needs to "protect the child's health or welfare and the parent's decision would result in harm to the child." *Clark*, 273 Ga. at 597 (emphasis added).

Applying these principles here, it is clear that the Brills have not harmed their child, even if a law enforcement official (though not the prosecutor) has charged them with violating a separate state law having nothing to do with child custody. Their 15-year-old son, D.R., suffers



from frequent seizures as a result of his frontal lobe epilepsy. Any parent would do whatever was necessary to end the horror of having to watch their child convulsing in a ball in the middle of the living room floor over and over again. They would seek the care of a doctor; the Brills did. They would give him the medicine the doctor prescribed; the Brills did. They would even turn to THC oil, a legal form of medical marijuana in Georgia; the Brills did.

None of it worked. And the Brills could not go another day of helplessly watching their son convulse before their eyes, left only with the option of picking him up, carrying him to the car, and driving 45 minutes to the nearest hospital. After numerous trials and error, the Brills, knowing the medical benefits of marijuana and having tried THC oil to no avail, decided to try a much more effective delivery method than oil: smoking the plant, itself. Finally, something worked: D.R. stopped having seizures, and for over 70 days remained seizure-free as a result of his parents' decision to medicate him with marijuana.

This particular parenting decision to treat their son's epilepsy in the only way proven to be most effective did not result in harm. It actually improved D.R.'s health.

## **II. THE GEORGIA LEGISLATURE HAS ALREADY RECOGNIZED THE MEDICAL BENEFITS OF MARIJUANA, INCLUDING IN THE TREATMENT OF EPILEPSY.**

The Brills' manner of relieving the unspeakable pain and suffering of their child was clearly not harmful but beneficial, and is even *supported* by the Georgia Legislature's recognition of the medical benefits of marijuana, including in treating epilepsy specifically. Under current law, Georgia makes it legal to possess and control 20 fluid ounces or less of low THC oil to treat specific medical conditions. O.C.G.A. § 16-12-191 (2018). These medical conditions include serious illnesses, such as cancer, Mitochondrial disease, Crohn's disease, Parkinson's disease, seizure disorders, and other severe or end stage illnesses, as well as two new

conditions – chronic pain and post-traumatic stress disorder (“PTSD”). O.C.G.A. § 31-2A-18 (2018); H.B. 65, 154th Leg., (Ga. 2018).

The Georgia Legislature’s recognition that these medical conditions can be treated and managed with marijuana, albeit a limited strain in the form of low THC oil only, is unsurprising.

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The therapeutic effects and benefits of medical marijuana are well-known, and scientific research indicates medical marijuana is effective at treating a variety of medical conditions and their symptoms.<sup>1</sup> Patients who find relief from marijuana often do not respond as well to prescription medications and tend to find the side effects of marijuana to be safer and more tolerable than those of prescription medications.<sup>2</sup> As the Institute of Medicine noted in an extensive report on medical marijuana, “there will likely always be a subpopulation of patients who do not respond well to other medications.”<sup>3</sup> Indeed, some children suffering from seizure disorders have been able to significantly reduce or eliminate seizures by using marijuana or marijuana-based drugs.<sup>4</sup> D.R. is one of them.

In drafting and debating the current THC oil law in Georgia, state legislators undoubtedly considered the therapeutic effects of medical marijuana, the public policy goal of reducing reliance on opiates and other painkillers<sup>5</sup>, the public opinion in favor of medical marijuana (70% of Americans<sup>6</sup>), and the more than one million patients nationwide who legally use prescribed

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<sup>1</sup> NATIONAL CONFERENCE OF STATE LEGISLATORS, STATE MEDICAL MARIJUANA LAWS, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited June 28, 2018).

<sup>2</sup> INSTITUTE OF MEDICINE, MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE BASE (1999), available at <https://doi.org/10.17226/6376>.

<sup>3</sup> *Id.*

<sup>4</sup> *The Epilepsies and Seizures: Hope Through Research*, NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE (June 27, 2018), <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Hope-Through-Research/Epilepsies-and-Seizures-Hope-Through>. See also, Sandra Young, *Marijuana stops child's severe seizures*, CNN (Aug. 7, 2013), <https://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/index.html>.

<sup>5</sup> Staci A. Gruber, et al., *Splendor in the Grass? A Pilot Study Assessing the Impact of Medical Marijuana on Executive Function*, 7 FRONTIERS IN PHARMACOLOGY 355 (2016).

<sup>6</sup> Elizabeth Mendes, *New High of 46% of Americans Support Legalizing Marijuana*, GALLUP (Oct. 28, 2010), <https://news.gallup.com/poll/144086/New-High-Americans-Support-Legalizing-Marijuana.aspx>.

medical marijuana.<sup>7</sup> They knew medical marijuana was often a preferred method of treatment for a variety of medical conditions; that is why they ultimately voted for and passed legislation that is now the law of the land in Georgia.

Nonetheless, the Georgia Legislature did not go far enough. Thirty-one states and the District of Columbia (as well as Guam and Puerto Rico) have legalized comprehensive medical marijuana programs.<sup>8</sup> Georgia is not one of them. A comprehensive medical program is one that, in addition to protection from legal penalties for marijuana possession and use, gives patients a variety of options for medical marijuana use, including a wider selection of marijuana strains and delivery methods.<sup>9</sup> In other words, a comprehensive medical marijuana program would allow more than just access to THC oil; it would also include smoking or vaporization of marijuana products, plant material, or extract.<sup>10</sup> A comprehensive medical marijuana program also provides easier access to medical marijuana through home cultivation, dispensaries, or some other unencumbered system.<sup>11</sup> None of the 31 states that have enacted these more comprehensive medical marijuana programs have gone back and repealed their laws.<sup>12</sup> To the contrary, many are expanding their programs, after noticing the laws are working, to include more qualifying conditions, more regulated dispensaries, more licensed practitioners who may recommend medical marijuana use, and lower fees for patients.<sup>13</sup>

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<sup>7</sup> *Medical Marijuana Patient Numbers*, MPP.ORG, <https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/> (last visited June 28, 2018).

<sup>8</sup> NATIONAL CONFERENCE OF STATE LEGISLATORS, STATE MEDICAL MARIJUANA LAWS, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited June 28, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> NATIONAL CONFERENCE OF STATE LEGISLATORS, MARIJUANA OVERVIEW, <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx> (last visited June 28, 2018).

<sup>13</sup> See, e.g., Elise Young, *New Jersey to Expand Medical Marijuana, Ease Prescriptions by Doctors*, BLOOMBERG (Mar. 27, 2018), <https://www.bloomberg.com/news/articles/2018-03-27/n-j-to-expand-medical-marijuana-ease-prescriptions-by-doctors>; Ryan Poppe, *Expansion Of Texas Medical Marijuana Laws Gaining Traction Among Lawmakers*, TEXAS PUBLIC RADIO (Apr. 19, 2018), <http://tpr.org/post/expansion-texas-medical-marijuana-laws-gaining-traction-among-lawmakers>; Greg Hilburn, *Louisiana to expand medical marijuana*, USA TODAY (June 2,



Georgia, on the other hand, does not have such a comprehensive medical marijuana program and is one of only 15 states where there is not wider access to more strains and delivery methods of medical marijuana.<sup>14</sup> Instead, Georgia and the rest of these 15 states have legalized only low THC products for limited medical purposes, preventing doctors and patients, like the Brills and D.R., from having access to other available safe and effective options.<sup>15</sup> The majority of states in this nation know low THC oils are not enough. They have trusted the evidence of marijuana's therapeutic benefits and accept that smoking or vaporizing marijuana may simply be more effective delivery methods than oils or pills for many patients, like D.R., who suffer from chronic, debilitating illnesses. Georgia should do the same.

While this Court does not have the power to enact comprehensive medical marijuana reform, it should not compound the Georgia Legislature's failures by punishing the Brills absent clear evidence that they have objectively and substantially harmed their child.

### **III. THE OVERCRIMINALIZATION AND IRRATIONAL DEMONIZATION OF MARIJUANA USE WILL CONTINUE TO HARM PEOPLE LIKE THE BRILLS**

The overcriminalization and irrational demonization of marijuana use continues to harm people like the Brills, and this Court should not be a part of such a harmful trend. Tearing the Brills away from their child would not only run against the tide of history, it would occur in a backdrop where marijuana is already over-criminalized. Between 1990 and 2010, the United States saw a 188% increase in the number of people arrested for marijuana offenses.<sup>16</sup> Between

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2018), <https://www.thenewsstar.com/story/news/2018/06/02/medical-marijuana-expanded-louisiana-after-two-bills-become-law/663371002/>; Jonathan A. Haven & Ruth A. Rauls, *Pa. Marijuana Program to Double in Size; Neighboring States Look to Compete*, THE LEGAL INTELLIGENCER (May 16, 2018), <https://www.law.com/thelegalintelligencer/2018/05/26/pa-med-mal-program-to-double-in-size-neighboring-states-look-to-compete/>.

<sup>14</sup> NATIONAL CONFERENCE OF STATE LEGISLATORS, STATE MEDICAL MARIJUANA LAWS, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited June 28, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> ACLU Foundation, *The War on Marijuana in Black and White* (2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf).



2001 and 2010, there were over 8 million marijuana arrests in the United States, 88% of which were for mere possession.<sup>17</sup> Marijuana arrests make up over half of all drug arrests in this country.<sup>18</sup> The statistics in Georgia are just as staggering. In fact, as of 2010, Georgia was 1 of 12 states with the highest number of marijuana arrests in the country, and 1 of only 5 states that saw the greatest increase of marijuana arrests from 2001 to 2010.<sup>19</sup>

This increased criminalization has not resulted in greater public safety. Remnant of a 1990s theory that crack downs on minor offenses would increase public safety and reduce violent crime, many states, including Georgia, now have in place very labor-intensive drug interdiction policies targeting low-level drug offenses. While targeted, these efforts have been ineffective, as there is no clear correlation between an increase in arrests for marijuana possession and a decrease in crime.<sup>20</sup> Quite the contrary, this misplaced emphasis on marijuana has actually created dangerous distractions for police officers who would rather focus their efforts elsewhere to improve public safety. Law enforcement efforts, and taxpayers' dollars, could be better spent on addressing and solving serious crimes. The Twiggs County Sheriff, confronted with local citizens upset about the criminalization of the Brills, knows this dilemma all too well, telling a local Macon news-station he had to enforce the law, whether he agreed with it or not.<sup>21</sup> Rather than responding to, investigating, and solving more serious and/or violent crimes that legitimately make the community unsafe, the Twiggs County Sheriff's hands were tied in his decision to arrest the Brills, even while seeming to understand and feel empathy for their

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Barmel Lyons, *Macon couple faces charges, loses custody of son for giving him marijuana for seizures*, WGXA-Macon (May 31, 2018), <http://wgxa.tv/news/local/macon-couple-marijuana>.

predicament.<sup>22</sup> Georgia does not have to continue to bind law enforcements' hands in this way. It could do what so many other states have done and increase access to a wider variety of medical marijuana and decriminalize its possession.

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Fears about marijuana stem not only from its over-criminalization, but also from its

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racialized enforcement. Despite the fact that marijuana is used at comparable rates by Whites and Blacks, state and local governments have aggressively enforced marijuana laws selectively against Black communities.<sup>23</sup> In 2010, the Black arrest rate for marijuana possession was 716 per 100,000, while the White arrest rate was 192 per 100,000.<sup>24</sup> In other words, a Black person was 3.73 times more likely to be arrested for marijuana possession than a White person.<sup>25</sup> Such racial bias undermines effective, legitimate drug policies because it leads law enforcement and lawmakers to discriminatorily associate marijuana use, even medical marijuana use, with criminals, thugs, and gangsters. These social and political antagonisms continue to undermine legislative support of more robust drug policies.<sup>26</sup>

We implore this Court not to rub salt into the wounds caused by the overcriminalization of marijuana. While people (especially people of color) continue to be unfairly imprisoned because of the state's dangerous obsession with marijuana use, they should not now have their children taken away from them because of it. The Brills have personally suffered one of the most dreadful collateral consequences imaginable as the result of Georgia's refusal to join the rest of the country in decriminalizing marijuana and adopting comprehensive medical marijuana

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<sup>22</sup> Joe Kovac, Jr. & Laura Corley, *Sheriff threatened, ridiculed for arresting parents who gave seizure-stricken son pot*, The Telegraph (May 31, 2018), <https://www.macon.com/news/local/article212265024.html>.

<sup>23</sup> ACLU Foundation, *The War on Marijuana in Black and White* (2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Bryan Stevenson, *Drug Policy, Criminal Justice and Mass Incarceration 2* (Global Comm'n on Drug Policies, Working Paper, 2011), available at [http://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Com\\_Bryan\\_Stevenson.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.pdf).

reform. For the Brills, this is not a policy argument or a political hot topic; their child's very life may well depend on it.

### CONCLUSION

For the reasons stated above, Amicus urges this Court to return D.R. back to his rightful home with parents who love him and want nothing but the very best to help him live and lead a healthy and happy life.

Respectfully submitted this 29th day of June, 2018.

/s/ Kosha S. Tucker

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CASE NO.: 143-2018j-019

**ORDER GRANTING AMICUS' MOTION FOR LEAVE TO FILE BRIEF**

Having read and considered the Motion of the American Civil Liberties Union Foundation of Georgia for Leave to File a Brief in Support of Suzeanna and Matthew Brill, the Motion is hereby **GRANTED**. The Court hereby Orders that the brief attached to Amicus' Motion be deemed filed as of the date of this Order.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Juvenile Court Judge  
Dublin Judicial Circuit

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