IN THE SUPREME COURT OF MISSOURI

NO. SC88049

IN THE INTEREST OF C.W.,

MALE, AGE 2 YEARS

ON TRANSFER FROM THE COURT OF APPEALS

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF EASTERN MISSOURI AND BAZELON CENTER FOR MENTAL HEALTH LAW IN SUPPORT OF APPELLANT

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STATEMENT OF JURISDICTION AND STATEMENT OF FACTS

This friend of the court brief adopts that jurisdictional statement and statement of facts as set forth in Appellant's brief.

STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than 500,000 members dedicated to defending the principles embodied in the Bill of Rights. The ACLU of Eastern Missouri (ACLU/EM) is an affiliate of the ACLU with over 4,800 members in Eastern Missouri. As part of its mission, the ACLU/EM has participated, either as counsel or as *amicus*, in numerous cases supporting individuals' Constitutional rights, including the fundamental rights of parents and the protection of persons with disabilities.

The Judge David L. Bazelon Center for Mental Health Law is a national non-profit advocacy organization that provides legal assistance to individuals with mental illness and mental retardation. The Bazelon Center was founded in 1972 as the Mental Health Law Project. Through litigation, policy advocacy, training and education, the Center promotes the rights of individuals with mental disabilities to participate equally in society, including the rights to have families and raise children. The Center has extensive experience with child welfare and mental health systems across the country.

The ACLU of Eastern Missouri and the Bazelon Center file this *amicus* brief in support of the rights of parents and of individuals with disabilities.

ARGUMENT

Historically, individuals with mental disabilities have faced severe societal biases regarding their fitness to serve as parents. For many years, the chief governmental response to the challenges of parenting with a mental disability was compulsory sterilization to prevent individuals with mental disabilities from having children. Although society's attitudes have evolved, the stereotypes about the ability of persons with mental disabilities to parent persist. Such deeply ingrained notions, together with widespread lack of understanding about what types of parenting services are effective for individuals with mental disabilities, have made it difficult for parents with mental disabilities to maintain their parental rights.

Missouri law, when properly applied, requires courts to consider the actual and present capacity of any parent, including one with a mental disability, rather than relying on generalizations or stereotypes. Missouri law also requires that parents be provided the reasonable assistance they need to care for the children before parental rights are terminated. The law should be construed as mandating reasonable assistance specific to the individual parent, especially where a parent is a person with a mental disability.

This case involves a mother diagnosed with physical and mental disabilities. In this case, there was no credible evidence that, based on her current condition, the mother's parental rights should be terminated. In addition, there was no meaningful effort to provide the mother with the services she would need to successfully parent her child. As a consequence, it appears the decisions to seek and allow the termination of parental rights in this case reflected widespread biases rather than a proper application of the law to the evidence.

I. THERE IS AN OVERWHELMING HISTORY OF NEGATIVE ATTITUDES TOWARD AND BIASES AGAINST PARENTS WITH MENTAL DISABILITIES CAUSING SUCH PARENTS TO FREQUENTLY FACE THE UNWARRANTED TERMINATION OF THEIR PARENTAL RIGHTS

Historically, individuals with mental disabilities have faced enormous societal biases concerning their fitness to maintain parental relationships. These biases continue to pervade the legal process.

One of the initial motivations for constructing large institutions to confine individuals with mental disabilities was "fear over genetic and societal consequences of allowing people considered mentally deficient to procreate." Stephen Greenspan & Karen Schlueter Budd, *Research on Mentally Retarded Parents*, *in* FAMILIES OF HANDICAPPED PERSONS 115, 115 (James J. Gallegher & Peter M. Vietze, eds., 1986). For many years, the chief response of the government to challenges of parenting with a mental disability was to sterilize individuals with mental disabilities to prevent them

from having children. During the first half of the twentieth century, at the height of the eugenics movement, sterilization laws targeted individuals with mental disabilities. See Susan Stefan, *Whose Egg is It Anyway? Reproductive Rights of Incarcerated, Institutionalized, and Incompetent Women*, 13 Nova L. Rev. 405, n. 33 (1989) (collecting law review articles on this topic). By 1971, nearly 70,000 persons had been involuntarily sterilized under state eugenic sterilization laws. Patricia Werner, *Terminating the Rights of Mentally Retarded Parents: Severing the Ties That Bind*, 22 J. Marshall L. Rev. 133, 129 (1988). Even the Supreme Court of the United States accepted the underlying assumptions of eugenics' proponents. See *Buck v. Bell*, 274 U.S. 200, 207 (1927) (upholding Virginia statute permitting superintendents of institutions for individuals with mental disabilities to condition release of residents on compulsory sterilization if they determined that sterilization was in the "best interests of the patient and of society"; "[i]t is better for all the world[] if.... society can prevent those who are manifestly unfit from continuing their kind. ... Three generations of imbeciles are enough.").

In more recent times, attitudes have shifted and concern over the genetic transmission of mental disabilities is less overtly expressed. The practice of sterilizing individuals has subsided. Nevertheless, "the underlying belief that persons with mental disabilities should not reproduce and are inherently unable to provide proper parenting to their children survives today." Susan Kerr, *The Application of the*

Americans with Disabilities Act to the Termination of the Parental Rights of Individuals with Mental Disabilities, 16 J. Contemp. Health L. & Pol'y 387, 387-8 (2000); see also, Katherine A. Judge, *Serving Children, Siblings, and Spouses: Understanding the Needs of Other Family Members*, *in* HELPING FAMILIES COPE WITH MENTAL ILLNESS 161, 164 (Harriet P. Lefley, ed., 1994) (citing evidence that individuals with serious mental illness lose custody of their children or have their parental rights terminated at disproportionately high rates despite low rates of child abuse).

Numerous commentators and researchers have observed that child welfare agencies and others tend to presume that parents with mental disabilities are unfit to maintain parental relationships regardless of their capabilities. See, *e.g.*, Kerr, *supra.*, at 401-4; David Shade, *Empowerment for the Pursuit of Happiness: Parents With Disabilities and the Americans With Disabilities Act*, 16 Law & Inequality 153, 159 (1998); Stefan, *supra.*, at 448; Krista A. Gallagher, *Parents in Distress: A State's Duty to Provide Reunification Services to Mentally Ill Parents*, 38 Fam. & Conciliation Cts. Rev. 234, 234 (2000). There is a perception that "a parental relationship involving a person with a mental disability [is] less than normal. The presumption that all persons with mental disabilities are similar and unable to be fit parents remains pervasive." Kerr, *supra.*, at 403-4.

Persons with mental disabilities continue to lose their children under circumstances that would rarely result in termination of parental rights for parents without disabilities. This is for at least two reasons. First, the prejudices and stereotypes of society about persons with mental disabilities are frequently reflected in the opinions of professionals in the child welfare system. Stefan, *supra.*, at 448. Expert testimony based on generalizations about a parent rather than actual conduct often results in termination. Often caseworkers are asked to assess the parenting capabilities of parents with mental disabilities when they lack the training to do so. Gallagher, *supra.*, at 250. A study of state mental health departments concluded that the "parenting capacity of the seriously and persistently mentally ill mother may be routinely viewed in a negative light" and that "[m]ental health professionals may have unspoken assumptions about the wisdom of allowing [mentally ill women to parent." Joanne Nicholson, *et al., State Policies and Programs That Address the Needs of Mentally Ill Mothers in the Public Sector*, 44 Hosp. & Community Psychiatry 484, 487-8 (1993). Prejudice against persons with mental disabilities pervades social attitudes because such prejudice is "(a) largely invisible, (b) largely socially acceptable, and (c) frequently practiced (consciously and unconsciously) even by individuals who regularly take 'liberal' or 'progressive' positions decrying similar biases and prejudices that involve sex, race, ethnicity, or sexual orientation." Michael L. Perlin, *"What's Good is Bad, What's Bad is Good, You'll Find Out When You*

Reach the Top, You're on the Bottom": Are the Americans with Disabilities Act (and Olmstead v. L.C.) Anything More than "Idiot Wind?," 35 U. Mich. J.L. Reform 235, 236 (2001/2002).

The second reason parents with mental disabilities lose their children so frequently is that they are often denied reunification services based on incorrect presumptions that they are incapable of learning to parent. Chris Watkins, *Beyond Status: The Americans With Disabilities Act and the Parental Rights of Persons Labeled Developmentally Disabled or Mentally Retarded*, 83 Cal. L. Rev. 1415, 1417-8 (1995). Termination of the parental rights of parents with mental disabilities often occurs because reunification services are not appropriately tailored to the parents' disabilities and, therefore, fail to address the problems leading to the need for intervention. Watkins, *supra*., at 1445-7; Kerr, *supra.*, at 415; Gallagher, *supra*., at 249. The study of state mental health departments found that the majority of parenting programs "were not specifically designed with the needs of chronic mentally ill parents and their children in mind." Nicholson, *supra.*, at 487. Likewise, services provided to parents with developmental disabilities are usually generic parenting services that do not recognize these parents' differences in learning processes and are typically provided by individuals who lack experience in dealing with people with cognitive impairments. Watkins, *supra.*, at 1453. Still, while mental illness can negatively impact an individual's ability to parent, most parents can

provide the parenting their children need if they receive the proper treatment and support. Joanne Nicholson, *et al.*, *Critical Issues for Parents with Mental Illness and Their Families*, National Mental Health Information Center, ch. 3, available at http://www.mentalhealth.samhsa.gov/publications/allpubs/KEN-01-0109/ch3.asp (last visited April 18, 2006). Parents with mental disabilities need parenting classes and services specific to their needs; however, there is often a poor fit between the parenting classes that are offered and the needs of parent with a mental disability. Barry J. Ackerson, *Parents with Serious and Persistent Mental Illness: Issues in Assessment and Services*, 48 Social Work 187, 191 (2003).

In light of the history, it is not surprising that the legislature has seen fit to establish procedural safeguards to insure that parents are afforded a fair hearing and due process before their parental rights are terminated. Because proceedings to terminate parental rights affect important liberty interests of both the parent and the child, strict compliance with statutory procedural safeguards should be required to insure that the child protections system does not become a tool to oppress rather than to serve society. The statutes' procedural safeguards should not be treated as mere technicalities; rather, they should be viewed as essential tools to safeguard the liberty interests of children and their parents.

When evaluating this case, this Court should bear in mind the history and prevalence of unwarranted presumptions that individuals with mental disabilities are

unfit for parental relationships. In a case such as this where the record lacks any evidence demonstrating that the parent-child bond is not worthy of preservation, this Court should skeptically evaluate the conclusory and unwarranted characterizations relied upon to justify the termination of parental rights.

II. A COURT MUST CONSIDER CURRENT CIRCUMSTANCES IN DECIDING WHETHER TO TERMINATE PARENTAL RIGHTS AND REQUIRE THAT REASONABLE ASSISTANCE PARTICULAR TO THE PARENT'S NEEDS BE PROVIDED PRIOR TO TERMINATION

The parent-child bond is a fundamental societal relationship. *In the Interest of K.A.W.*, 133 S.W.3d 1, 12 (Mo. banc 2004). A parent's right to raise her child is one of the oldest fundamental liberty interests recognized by the United States Supreme Court. *Id., citing Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). "The fundamental liberty interest of natural parents in raising their children does not evaporate simply because they have not been model parents or have lost temporary custody of their children to the State." *Id., citing Santosky v. Kramer*, 455 U.S. 745, 753 (1982), and *In the Interest of M.D.R.*, 124 S.W.3d 469, 472 (Mo. banc 2004). "Because parental rights are a fundamental liberty interest, statutes that provide for the termination of parental rights are strictly construed in favor of the parent and preservation of the natural parent-child relationship." *In the Interest of A.S.W.*, 137 S.W.3d 448, 452 (Mo. banc 2004).

A. The Decision to Terminate Parental Rights Because of a Mental Disability Must Be Based on Real Evidence that Under the Current Circumstances the Parent Is Unfit

The court below improperly relied on outdated and generalized evidence concerning the mother's mental disability, without considering its actual current effects on the mother's ability to parent. The novice caseworker assigned to this

matter believed the mother was unfit because of her mental condition. (T. 106, 136). The only expert evidence to support this belief was based on a brief psychological examination on August 20, 2003, which was more than two years prior to the filing of the petition to terminate. (T. 25). When testifying at the hearing, the psychologist had not seen the mother for 29 months and did not know her current condition or functioning level. (T. 40). Perhaps most significantly, the expert admitted that her prediction of unfitness was based on generalities. (T. 40). The trial court's judgment — rather than being based on current circumstances — relied upon the outdated psychological evaluation, generalities, and recited events from the mother's past to justify terminating her parental rights. (L.F. 125).

The circumstances under which parental rights might be terminated are limited by statute. Mo. Rev. Stat. § 211.447. The statute requires clear and convincing evidence that the parent's mental disability is (a) permanent or not likely to be reversed and (b) causes the parent to be unable to provide the necessary care, custody, and control of the child. See *A.S.W.*, 137 S.W.3d at 452. Courts do not have "blanket authorization for termination of parental rights on account of mental illness" unless it rises to the level prescribed by statute. *In re S.M.H.*, 170 S.W.3d 524, 532 (Mo. App. E.D. 2005); *In the Interest of J.I.W.*, 695 S.W.2d 513, 515 (Mo. App. W.D. 1985). (It is for this reason that "when a child's original removal was based on the parent's

mental illness ... ‘failure to rectify’, cannot be utilized to terminate if the parent's condition doesn’t improve.” *Id.*, 695 S.W.2d at 515.)

The evidence presented in this case was a far cry from meeting the statutory standard for termination. The mother was alleged to be unable because of her mental and physical disability to provide the special needs care her child needed in his first days. (T. 190). More specifically, C.W. had been born with a cleft palate. (T. 16). People were concerned that the mother would not able to properly care for the child's special needs at that time in the manner required because of her cerebral palsy and bi-polar disorder. (T. 156, 159).

There was no competent evidence offered in this case that the mother’s condition was permanent or unlikely to be reversed. To the contrary, the evidence showed the mother had been and continued to be successfully treated with the psychotropic medication Haldol.

There was also no competent evidence that the mother’s mental disability currently caused her to be unable to provide the necessary care, custody, and control of the child. The only expert testimony offered in support of termination was based on the mother’s mental illness *before* she began receiving effective treatment, and reflected generalized assumptions rather than specific instances of neglect. This testimony was provided by a psychologist who had not examined the mother since more than two years before the hearing. Significantly, the examination occurred

before the mother began her treatment. In addition, the psychologist's opinions were speculative, based on generalizations about the mother's mental disorder more than any concrete examples of the mother's own behavior.

In the case at bar, the mother had never abused the child; rather, the child was removed from her custody when he was three days old because authorities *feared* he might be neglected if he remained with his mother. There have been no incidents of abuse or neglect since. (T. 78).

A decision to terminate parental rights must be based not merely on the parent's past conduct but also on the parent's conduct at the time of termination. *In re K.A.W.*, 133 S.W.3d 1, 9 (Mo. banc 2004). "Regardless of the past, [termination of parental rights] 'requires the trial court to determine that the parent is *currently* unfit ··· to be a party to the parent and child relationship.'" *In re K.A.W.*, 133 S.W.3d at 20-21, *quoting In re T.A.S.*, 32 S.W.3d 804, 815 (Mo. App. W.D. 2000) (emphasis supplied in *K.A.W.*). In the case at bar, the court relied only on old information that itself was based on generalities. See *In the Interest of J.M.N.*, 134 S.W.3d 58, 71 (Mo. App. W.D. 2004) (most of the evidence that the circuit court cited in support of terminating parental rights was conduct engaged in before parent was treated for bipolar disorder); see also, *In the Interest of D.L.M.*, 31 S.W.3d 64 (Mo. App. E.D. 2000) (reversing termination of parental rights of mother with severe mental illness who had made substantial progress in controlling her illness).

Two significant things changed between the time when the child was removed from his mother's custody and the court's decision to terminate her parental rights. First, the child's condition changed. As a result of his cleft palate, he had required special bottles and nipples as an infant and had other problems, including reflux and ear infections. (T. 137-138). But when he reached the age of one, surgery was performed on his cleft palate. (T. 138). While the child still has some special needs, the circumstances are significantly different than they were at the time of removal. He no longer required the specialized feedings that his mother had been unable to provide because of her disability. (T. 140). Second, and most important, the mother's condition has changed. She received treatment for her mental disability and had been compliant with treatment for nearly a year and a half at the time her parental rights were terminated. (T. 44-45, 46, 55). Her mental condition had improved sufficiently that she was transferred to a less-restrictive program. (T. 47, 52, 56).

Additionally, the trial court relied in part on incorrect and incomplete evidence. Word of the mother's progress was not reported to the court on a timely basis. It is particularly troubling that the neophyte caseworker repeatedly supplied false information to the court about the mother's progress in treatment. The caseworker continually reported to the court that the mother had been dropped from her treatment program for noncompliance even after learning this was not true. (T. 64, 69).

The record contains no evidence that the mother was currently unfit. The trial court relied on the stale psychological evidence based upon the August 2003 examination of the mother. (L.F. 123). In doing so, the court completely ignored that in the interim the mother sought and received the treatment that was recommended for her. Indeed, in the 2003 report, the psychologist herself opined that if the mother continued to work on her own problems she might one day be able to be a good and responsible mother. (L.F. 20). We know that the mother worked extensively to address her own problems. We know the family members and experienced case workers involved believe the mother's condition had improved significantly. (T. 51, 56, 59, 63, 67, 156, 169). What we do not know is why the state did not provide any expert testimony about the mother's fitness to parent based upon her current conditions and the child's current needs.

The paucity of evidence supporting termination is most apparent when comparing the record in the case at bar to evidence adduced in a case where the Court of Appeals did find clear and convincing evidence. In *J.I.W.*, the mother had been in and out of mental hospitals on at least eight occasions; was engaging in bizarre behavior shortly after the birth of her child; had thought she had twins and had called the Air Force looking for her children; tried calling her own mother, who was deceased; locked herself and the child into an apartment; threatened suicide if her visitation sessions were taken away; and failed to show up in court on numerous

occasions. *J.I.W.*, 695 S.W.2d at 515-6. The case also featured "psychiatric reports ... replete with examples of the mother's unstable mental condition." *Id.*, 695 S.W.2d at 515. The mother in *J.I.W.* also had unusual beliefs about the birth of babies at the hospital where she gave birth to her son. The mother in this case has no such record of behavior.

In contrast to the case at bar, the *J.I.W.* decision also relied on competent and reliable expert testimony. *Id.* The psychiatrist who supported termination of parental rights had examined the mother many times over many years, including recently. *Id.*, 695 S.W.2d at 516. The expert in this case examined the mother one time more than two years prior to hearing. (T. 25). The expert was not aware of the mother's current condition, and had based her opinions on generalities. (T. 40).

The mother's efforts to comply with services also distinguish this case. The mother in *J.I.W.* was unable or unwilling to comply with the plans put forth to help her reunify with her child. She regularly missed her appointments to see her son. *Id.* She refused to sign two court-approved plans that would have allowed her to regain custody. *Id.* In contrast, the mother in the case at bar substantially complied with each task she was asked to complete and visited her son wherever permitted to do so by the state.

The evidence adduced in this case does not remotely satisfy the "clear and convincing" standard required for termination of parental rights. The clear and

convincing evidence standard means "'the court should be *clearly convinced* of the affirmative of the proposition to be proved.'" *In re J.D.K.*, 685 S.W.2d 876, 880 (Mo. App. W.D. 1984), *quoting Grissum v. Reesman*, 505 S.W.2d 81, 86 (Mo. 1974) (emphasis supplied by *J.D.K.*). By contrast, here, termination was based on stale, sparse, speculative evidence, reflecting unfounded assumptions that the mother's mental disability made her unable to parent. The evidence presented here was not sufficient to sever the bond between mother and child.

B. Parental Rights Should Not Be Terminated Where the Mother Has Not Been Provided with or Given the Opportunity to Obtain Assistance in Caring for Her Child

The court erroneously failed to consider whether additional services would have enabled the return of the child before terminating parental rights. The mother in this case admitted she still needed assistance with her son. (T. 224). She would have assistance from family and friends. (T. 218-219). But she needed other services, too, at least temporarily. She had demonstrated a willingness and ability to participate in the services that were provided to her by complying with the Service Agreement. The caseworker told the court, however, that there were no other services available for the mother. (T. 96).

Before terminating parental rights pursuant to Section 211.447.4.3, a circuit court must consider "whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an

ascertainable period of time." Mo. Rev. Stat. Sec. 211.447.6.4; *In the Interest of J.M.N.*, 134 S.W.3d 58. Substantial evidence that additional services would fail or be unavailable is required before termination. *In the Interest of A.S.W.*, 137 S.W.3d at 453-4., This Court has recognized that:

> Parenting is frequently a group effort. Children are often raised with extensive help from grandparents, siblings, extended family, neighbors, day care, baby sitters, a nanny, or an array of public and private service organizations. For this reason, there is nothing in section 211.447 that allows a circuit court to terminate parental rights because, without assistance, a parent lacks the ability to care for the child. Our juvenile law anticipates that many parents will be reunited with their children once the parent and the state have worked together to build a better parenting support network.

Id., at 453.

As explained in Point I, *supra.*, reunification services commonly are not appropriately tailored for parents with mental disabilities and, therefore, fail to address the problems leading to the need for intervention. While mental illness can negatively impact an individual's ability to parent, most parents can provide the parenting their children need if they receive the proper treatment and support. See *Point I*, supra. Thus, it is critical to consider whether appropriate services have been offered to a parent with mental illness before terminating parental rights.

In this case, the mother participated in the programs that were provided for her. She completed her service plan. Her caseworker, Lindsey Ulen, was new. Ulen had

just graduated from college when was assigned this case. (T. 73). It was one of her first cases and her only case where removal was caused by a parent's mental illness. (T. 106). Ulen relied upon the August 2003 report of the psychologist for her belief that the mother could not take care of a child with special needs. (T. 127).

The mother was never provided an opportunity to care for her child with supportive services. The mother was not allowed any visits outside of the Department of Social Services' building. (T. 123-124). One of the steps the juvenile officer's witness Angela Wadlow thought would be necessary in this case was a graduated process of visits away from the building. (T. 71). This was never attempted. Instead, all visits were stopped with the trial court's order terminating parental rights.

Indeed, the record demonstrates that the mother was not provided the types of services that would be necessary to regain custody of her child. Although the psychologist opined that the mother could work on her own problems and become a responsible mother, the mother's caseworker determined—based on the same psychological report—that the mother was unfit. (L.F. 20).

Courts must require more than a bare assertion that no services are available for the mother. The evidence indicated that with appropriate assistance, the parent-child bond could be preserved. It is incumbent upon the state to provide those services before exercising its awesome power to severe the bond between mother and child. The state bears a substantial burden of proof that the trial judge should force it

to meet with real, clear, and convincing evidence before the court enters an order infringing on the most fundamental of rights. In this case, there was no real evidence that the mother was provided or given the opportunity to obtain services appropriate for her that would allow her to regain custody of her child.

III. COURTS MUST REQUIRE STRICT COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS ENACTED TO PROTECT IMPORTANT LIBERTY INTERESTS

The legislature has created bright line rules to govern cases implicating parental rights. One such rule is § 211.455's requirement that "[t]he court shall order an investigation and social study" in cases involving the involuntary termination of parental rights and direction that "[t]he investigation and social study shall be made by the juvenile officer, the state division of family services or a public or private agency authorized or licensed to care for children or any other competent person, as directed by the court[.]" Mo. Rev. Stat. § 211.455. For the reasons recognized by the Court of Appeals in *In the Interest of A.H.*, 169 S.W.3d 152 (Mo.App.S.D.2005) and in the case *sub judice*, it is apparent that the legislature sought to bring some objectivity to termination proceedings by not relegating the investigation solely to the Children's Division that is itself seeking the termination of parental rights.

Section 211.455 provides the opportunity for an investigation by a person or agency that is not already vested in the outcome of the investigation. The need for such an outsider's view is highlighted by this case where the person who prepared the investigative report was the same person who had repeatedly supplied misinformation to the Court and who is alleged to have engaged in a cover-up.

Section 211.455's implicit requirement that an investigation be conducted *after* the filing of a petition is also important. As discussed, *supra.*, a decision to terminate

parental rights should be based on current conditions and circumstances. The legislature wisely concluded that an investigation should be ordered by the Court and conducted after the petition is filed.

The rules the legislature implements in § 211.455 created bright lines. No doubt they were created as a prophylactic against deciding these kinds of cases on an *ad hoc* basis. In light of our own societal and governmental history of preventing individuals with mental disabilities from having and raising children, these bright-line rules are best viewed as wise efforts to insure that we do not devalue the dignity and rights of any child or parent based on generalities, bias, or prejudices about persons with mental disabilities.

This Court should hold that in cases involving the termination of parental rights, reversal is required in the absence of strict compliance with procedural safeguards.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF EASTERN MISSOURI

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that pursuant to Rule 84.06(c), this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 4,835 words, exclusive of section exempted by the rules, determined using the word-count feature of Microsoft Office Word 2003. The undersigned further certifies that the accompanying floppy disk has been scanned and was found to be virus free.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of this brief and one copy of the brief on floppy disck were served upon the counsel identified below by U.S. Mail, postage prepaid, on October 12, 2006:

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