

COURT OF APPEALS
STATE OF NEW YORK

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IVEY WALTON, et al. :
: :
Appellants, :
: : A.D, Third Dept. Docket
-against- : # 98700
: :
NEW YORK STATE DEPARTMENT :
OF CORRECTIONAL SERVICES, et al. :
: :
Respondents. :
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**BRIEF OF PROPOSED AMICUS CURIE,
THE INNOCENCE PROJECT, INC., AND
THE INCARCERATED MOTHERS PROGRAM**

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STATEMENT OF INTEREST

Amici, The Innocence Project, Inc., is a nonprofit legal clinic and criminal justice resource center. Founded by Prof. Barry Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law in 1992, the Project provides *pro bono* legal services to indigent prisoners for whom post-conviction DNA testing can provide conclusive proof of innocence. The Project pioneered the litigation model that has to date exonerated 187 innocent persons by post-conviction DNA testing and served as counsel in the majority of those cases. As such the Project has represented innocent members of society affected by the New York State Department of Correctional Services' (hereinafter "NYSDOCS" or "DOCS") 'surcharge' levied against family members who pay for the collect calls their loved ones make from prison. These family members have made deep financial and personal sacrifices to maintain telephone contact with incarcerated relatives ultimately proven innocent by DNA evidence. The Project currently represents clients in New York State Correctional facilities, who have maintained their innocence (some for decades), and are trying to obtain biological evidence that may exonerate them.

Amici also include The Incarcerated Mothers Program (hereinafter "IMP"). IMP is a program of Edwin Gould Services for Children and

Families, which has 65 years of experience, and is currently one of the largest minority administered foster care agencies in New York City. Edwin Gould also provides permanency services, post-adoption services, residential services, intermediate care services, health and mental care, preventive services, domestic violence services, job readiness training and supportive services for families affected by maternal incarceration.¹ IMP joins this brief as an organization that advocates on behalf of the children of current incarcerated and their caretakers, who pay for the collect phone calls that enable these children to preserve a relationship with their incarcerated mothers and fathers.

Both organizations maintain extensive relationships with the incarcerated and their families and thought it necessary to address some of the legal issues raised in the Courts below. *Amici* hope that their real world experiences will enable the court to understand the human issues underlying the legal analyses and to comprehend the severity of the actual injuries the DOCS ‘surcharge’ causes to the families of prisoners. Significantly, the First Amendment and Taxations issues involved in the current phone policies will likely be repeated in subsequent phone contracts, should those concerns not be addressed by this court. We write then to detail the drastic

¹ See “Incarcerated Mothers Program Objectives and Descriptions” (hereinafter, “IMP Objectives and Descriptions” at 1. Submitted herewith as Attachment A.

