

STATEMENT OF INTEREST OF AMICUS CURIAE

The Coordinated Action for the Right to Know One's Origin (CADCO) (www.cadco.asso.fr) asks the Court to accept this case. CADCO is a French-based association of over 3000 abandoned adults, natural parents, adoptive parents, and adoption professionals devoted to ending anonymous child surrender in France and elsewhere. CADCO's founders are Nathalie Margiotta, born "under X" and Pierre Verdier, former Director of the French Aide Social (a department of social services). Where possible, CADCO also helps abandoned persons research their origins and deal with the suffering legalized desertion has caused them. Because France has had anonymous surrender laws for sixty-four years, CADCO can show Ohio its future should the Deserted Child Act evade review now.

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case present significant issues related to one of the most precious and fundamental rights in law: A natural parent's right to the care and custody of his children. CADCO defers to Smith's explanation of why this case involves a substantial constitutional question as regards parents' rights and the separation of powers doctrine, and thus incorporates by reference Smith's explanation. CADCO focuses on why this case is one of great public interest.

The validity of the Deserted Child Act (DCA) is of great public interest because it will deprive a large number of persons arbitrarily and irrevocably of their identities. The

DCA models the French Sous X laws, enacted informally in 1941, and codified formally in 1993. Law 93-22, Jan. 8. Those laws were enacted due to an increase in illegitimate births caused by the German occupation and the absence of a good many French men during WWII. The law allowed any woman to give birth for free and secretly in a hospital. Background information about the mother was required, but kept sealed. The post-WWII era coincided with a high demand for adoptable children, and thus the law stayed in force. Now, about 450,000 persons have been deserted under X in France. See Jon Henley, Court rules against those who seek parents. *The Guardian*. Feb. 15, 2003. Some European mothers travel to France specifically to utilize the law.

The DCA is also open to abuse. Does the overwhelmed mother--who supposedly sees no other alternative--understand that she is not consenting to adoption, but declaring herself neglectful? That Appellant requires searching missing databases after a desertion shows the DCA's vulnerability to extortion, kidnapping, and interference with custody. Adoptees do not have a fundamental right to access their adoption files. But the DCA, unlike the amended Sous X laws, contemplates the eradication of all information whatsoever. Even should the legislature repeal the DCA later and allow open records, the state will have no substantial file to turn over. There simply is no recourse for the anonymously deserted.

In WWII France, there were ostensible reasons for legalizing anonymous surrender. CADCO mistrusts those reasons, but at least there was some pretextual rationality to them. It is thus with pure consternation that CADCO has watched the flashflood enactment of safe haven laws in the United States. Since WWII, neither the United States nor Ohio has been occupied by a foreign enemy, been overwhelmingly Catholic, had the death penalty for abortions, or seen an upsurge in abandoned babies.

The entire impetus for legalizing anonymous surrender seems to be a reaction to one or two tragic occurrences, and the speculation that one or two tragic occurrences may happen again--and that this justifies giving all parents of newborns the absolute right to surrender their children anonymously and arbitrarily. This speaks to policy, but the great public importance cannot be dismissed.

STATEMENT OF THE CASE AND FACTS

CADCO adopts and incorporates by reference the entire statement of the case and facts in the Memorandum in Support of Jurisdiction of the Appellant, Erik L. Smith.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of law: The public has a right to restrain the state from encouraging harm against third persons as a tool in bargaining with potential criminals.

The Deserted Child Act (DCA) lets a parent desert their unharmed newborn with peace officers or certain medical workers. R.C. 2151.3515 - 3530. This behavior used to be child endangerment. R.C. 2919.22. Aside from calling law enforcement, neither children's services nor the person receiving the child acts differently under the DCA than they would under R.C. 2919.22. One wonders, then, why the legislature created a new Act instead of amending R.C. 2919.22 to except parents who voluntarily deliver their unharmed newborns to medical service workers, peace officers, or hospital

employees. After all, similar exceptions exist in other criminal statutes. For example, one has an affirmative defense to interference with custody where "the actor reasonably believed that the actor's conduct was necessary to preserve the child's health or safety." R.C. 2919.23(C). And a custodian does not endanger a child by treating her illness solely through prayer under the tenets of a recognized religious body. R.C. 2919.22(A).

Why did the legislature not simply amend R.C. 2919.22(A) to immunize parents who voluntarily delivered children unharmed to medical workers or peace officers, and to let those parents stay anonymous? The answer: Because deserting one's child safely still harms the public and family, which an anonymity amendment would clearly show. The reader would naturally ask why a parent needed to remain anonymous to follow a lawful procedure devoted to keeping the parent themselves from harming the child. Seeing no logical answer, the reader makes the only reasonable conclusion: that the action still causes harm, and that anonymity is not a rational basis for the parent's action, but a tool the state uses to bargain with potential perpetrators of a crime against the family. The legislature has the authority to manipulate statutes. But the legislature infringes on a public right where it decriminalizes an action while still leaving third persons victimized.

The DCA's only independent purpose therefore was to create a fake distance between desertion and endangerment--as if a change in rubric keeps the harm inherent under one from being harm under the other. In that sense, appellant desires that Ohio return to previous law. The public interest demands that it does.

CONCLUSION

For these reasons, this case involves matters of public and great general interest and a substantial constitutional question. CADCO asks this Court to grant jurisdiction and allow this case so the important issues presented will be reviewed on the merits.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons, by regular mail on August 1, 2005:

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