No. 10-10

IN THE

Supreme Court of the United States

MICHAEL D. TURNER,

Petitioner,

v.

REBECCA L. ROGERS, ET AL.,

Respondents.

On Writ Of Certiorari To The Supreme Court Of South Carolina

BRIEF OF SENATORS DEMINT, GRAHAM, JOHANNS, AND RUBIO AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF SENATORS DEMINT, GRAHAM, JOHANNS, AND RUBIO AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICI CURIAE*[1]

This case concerns the procedural protections afforded to noncustodial parents in state civil contempt proceedings to enforce child support obligations. South Carolina's child support enforcement program—like the programs in every state—is part of a comprehensive federal-state partnership first implemented by Congress in 1974, Pub. L. No. 93-647, § 101(a), 88 Stat. 2351 (42 U.S.C §§ 651 *et seq.*) (adding Title IV-D to the Social Security Act). Approximately ten years after implementing the program, Congress enacted the Child Support Enforcement Amendments of 1984. Pub. L. No. 98-378, 98 Stat. 1305. This legislation requires states to deduct unpaid child support from delinquent parents' tax refunds, allows liens to be imposed on delinquent parents' property, and compels employers to withhold child support from delinquent parents' pay. *Id.* § 3(b) (codified as amended at 42 U.S.C. § 666 (2006)).

Amici curiae are Senators Jim DeMint and Lindsey Graham of South Carolina, Senator Mike Johanns of

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[1] Pursuant to this Court's Rule 37.3(a), letters of consent from all parties to the filing of this brief have been submitted to the Clerk. Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Nebraska, and Senator Marco Rubio of Florida. As members of Congress, *amici* have a substantial interest in preserving the congressional choices and compromises that created the comprehensive federal-state partnership regulating child support enforcement nationwide. South Carolina has implemented a reasonable, congressionally-authorized policy in this area and that policy deserves respect. Further, as many members of Congress have noted, failure to pay child support is a major problem that inflicts tremendous social and financial costs on custodial parents and children. *See, e.g.*, 155 Cong. Rec. S10700, 10705-06 (2009) (statements of Senators Kohl and Rockefeller) (describing child support payments as a much-needed "lifeline" for custodial parents); 144 Cong. Rec. 8827 (1998) (statement of Rep. McCollum) (describing failure to pay child support as an "abdication of moral and legal duty by deadbeat parents"). Indeed, as of September 30, 2008, the federal Office of Child Support Enforcement reported that child support arrears totaled $105.5 billion nationally. *See* Mich. Supreme Court, *Underground Economy* 11-12 (2010), http://courts.michigan.gov/scao/resources/publications/reports/UETF-2010.pdf (citing Office of Child Support Enforcement, *Table 5: Current And Arrears Collections Due And Distributed, FY 2008*, *available at* http://www.acf.hhs.gov/programs/cse/pubs/2009/reports/preliminary_report_fy2008/table_5.html (last checked January 27, 2011)). The failure of noncustodial parents to pay their child support is a national problem and Congress has expended tremendous effort developing a federal-state regulatory regime to solve it. Members of Congress can thus offer the Court a unique perspective on the

effects of upsetting this legislative framework by imposing additional requirements on cash-strapped states.

SUMMARY OF ARGUMENT

Petitioner Michael Turner is a noncustodial parent who has consistently refused to honor his child support obligations. He now asks the Court—on behalf of delinquent parents everywhere—to overturn a century of settled precedent and establish a broad new entitlement to state-funded counsel whenever a civil litigant faces the prospect of detention for civil contempt. The Court should refuse petitioner's request for state-funded counsel in civil disputes for three independent reasons.

First, the right to counsel exists to prevent the state and federal governments from convicting people of crimes they did not commit. It has never been extended to civil disputes between private parties. The Sixth Amendment does not mince words: "In all *criminal prosecutions*, the accused shall enjoy the right … to have the assistance of counsel for his defense." US Const. amend. VI (emphasis added). The Amendment is so limited because criminal proceedings involve professional prosecutors seeking to impose punishment. In civil proceedings, by contrast, private parties face each other and punishment is not a factor.

Civil contempt is no different. It is simply the mechanism courts use to police civil litigation and enforce decrees incident to that litigation. No indictments are filed, there is no requirement of probable cause, contemnors are not read their *Miranda* rights, professional prosecutors are not involved, and on the rare occasions when contemnors

face imprisonment, it is only where a court determines that they have the capacity to comply with a court's orders but nonetheless refuse to do so. As the Court has long recognized, a civil contemnor "carries the keys of his prison in his own pocket," *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442 (1911): the contemnor is released the instant he or she chooses to comply with the court's orders.

Providing state-funded counsel to one side of a civil dispute would shatter the fundamental parity between the parties that underlies the civil system. Upsetting the balance would be a particularly serious problem in the child support context, where custodial parents are often pro se. If petitioner prevails, custodial parents will not only have to fend for themselves in court, but they will be forced to litigate against state-funded lawyers. This, in turn, will seriously undermine the judicial system's ability to enforce a noncustodial parent's obligation to pay child support, ultimately to the detriment of the children who depend on that support.

Second, federalism and respect for congressional authority require honoring reasonable policy choices made by the states and Congress to achieve permissible goals. In the child support context, civil contempt backed by the threat of incarceration is a highly effective tool, which states like South Carolina reserve for only the most extreme circumstances. The Federal Office of Child Support Enforcement has compiled information on state programs, all of which illustrate the value of detention as a tool for collecting child support from unwilling noncustodial parents. Moreover, these survey results demonstrate that most states cannot afford a broad new

entitlement to counsel. They would have to stop using this enforcement mechanism altogether, thus removing from their quivers a powerful tool to compel noncustodial parents' compliance with their child support obligations.

Third, the Court has always clearly distinguished between civil and criminal contempt. Civil contempt sanctions are used to compel compliance with court orders. Inability to comply is a full defense and detention is never punitive. Extending criminal protections like the right to counsel—which would eventually bring the full panoply of criminal procedural protections along with it—to civil contempt cases would require overturning at least one hundred years of settled constitutional law dating back to *Gompers*, 221 U.S. at 442. Petitioner provides no reason to abandon this precedent and that long-established distinction.

ARGUMENT

I. THE RIGHT TO COUNSEL EXISTS TO PREVENT WRONGFUL CONVICTION FOR CRIMINAL OFFENSES AND IS LIMITED TO CRIMINAL PROCEEDINGS.

The Sixth Amendment exists to prevent individuals from being wrongfully convicted of crimes. The rights enshrined therein protect the accused from the power of the state and are accordingly limited, as the text says, to "criminal prosecutions." U.S. Const. Amend. VI. That limitation is not "mere formalism." *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 198 (2008) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972) (plurality opinion)).

The limitation to criminal prosecutions applies with particular force to the right to state-paid counsel.

The purpose of the right to counsel is to create parity between the accused on one side, and the state's professional prosecutor on the other. The right does not, however, exist to help civil defendants, such as Mr. Turner, avoid complying with court orders—such as an order to make child support payments—where, as here, a neutral court has concluded that the defendant is capable of complying with the order. And it certainly does not exist to help civil defendants oppose legitimate claims filed by pro se, indigent mothers like Ms. Rogers.

1. From its inception, the right to counsel has ensured parity in criminal proceedings. The framers included it in the Bill of Rights to offset the power of the public prosecutor. *See, e.g.*, *United States v. Ash*, 413 U.S. 300, 308 (1973) (explaining that one "factor contributing to the colonial recognition of the accused's right to counsel was the adoption of the institution of the public prosecutor from the Continental inquisitorial system"). The right and the increasing reliance on public prosecutors were inextricably linked. As the Court has explained:

> [E]arly in the eighteenth century the American system of judicial administration adopted an institution which was (and to some extent still is) unknown in England: while rejecting the fundamental juristic concepts upon which continental Europe's inquisitorial system of criminal procedure is predicated, the colonies borrowed one of its institutions, the public prosecutor, and grafted it upon the body of English (accusatorial) procedure embodied in the common law. Presumably, this innovation was brought about by the lack of lawyers, particularly in the

> newly settled regions, and by the increasing distances between the colonial capitals on the eastern seaboard and the ever-receding western frontier. Its result was that, at a time when virtually all but treason trials in England were still in the nature of suits between private parties, the accused in the colonies faced a government official whose specific function it was to prosecute, and who was incomparably more familiar than the accused with the problems of procedure, the idiosyncrasies of juries, and, last but not least, the personnel of the court.

Ash, 413 U.S. at 308 (quoting F. Heller, The Sixth Amendment 20-21 (1951) (footnote omitted in original)).

The framers thus included the right to counsel "to minimize the imbalance in the adversary system that otherwise resulted with the creation of a *professional* prosecuting official." *Id.* at 309 (emphasis added); *see also, e.g.*, *Johnson v. Zerbst*, 304 U.S 458, 462-63 (1938) (the right to counsel "embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented *by experienced and learned counsel*." (emphasis added)).

The right to counsel's foundation in the institution of the public prosecutor has constrained it ever since. Indeed, *Gideon v. Wainwright*, the parent of modern right-to-counsel jurisprudence, was unambiguous on this point: "Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. . . . That government hires lawyers to

prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). And ever since *Gideon*, the Court has consistently applied and understood the right to counsel in these terms. *See, e.g.*, *Michigan v. Harvey*, 494 U.S. 344, 356-57 (1990) (Stevens, J., dissenting) (explaining that the Sixth Amendment thus "assures 'Assistance' at trial, when the accused is confronted with both the intricacies of the law and the advocacy of the public prosecutor." (quoting *Ash*, 413 U.S. at 309) (emphasis added)); *United States v. Morrison*, 449 U.S. 361, 364 (1981) (defense counsel counterbalances state prosecutors and thus "assure[s] fairness in the adversary criminal process"); *Brewer v. Williams*, 430 U.S. 387, 424-25 (1977) (Burger, C.J., dissenting) ("[T]he right to counsel is fundamentally a 'trial' right necessitated by the legal complexities of a criminal prosecution and the need to offset, to the trier of fact, the power of the State as *prosecutor*." (emphasis added)); *Herring v. New York*, 422 U.S. 853, 862 (1975) ("The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.").

For this reason, the Court has never suggested that the right to counsel exists in civil cases with private parties on both sides. To the contrary, the Court has consistently limited the right to proceedings where the state is *both* a party *and* is represented by professional counsel. For example, in *Gagnon v. Scarpelli*, the Court held that parolees have no right to counsel at parole-revocation hearings.

411 U.S. 778, 787 (1973). The Court explained that because these hearings are informal and the state is not represented by a lawyer, the parolee has no right to counsel—even though he faces the possibility of detention. It contrasted revocation hearings, in which "the State is represented, not by a prosecutor, but by a parole officer," with criminal proceedings, in which "the State is represented by a prosecutor." *Id.* at 789. Indeed, the Court was concerned that if "counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel." *Id.* at 787. The proceedings would then "be prolonged, and the financial cost to the State—for appointed counsel, counsel for the State, a longer record, and the possibility of judicial review—will not be insubstantial." *Id.* at 788.

The Court deployed similar reasoning in *Middendorf v. Henry*, which held that there is no right to counsel in summary court martial proceedings. 425 U.S. 25 (1976). In a summary court martial, there is no public prosecutor; instead "[t]he presiding officer acts as judge, factfinder, prosecutor, and defense counsel." *Id.* at 32. Indeed, the Court explained, "the adversary nature of civilian criminal proceedings is one of the touchstones of the Sixth Amendment's right to counsel." *Id.* at 40. The Court's holding that the accused had no right to counsel thus relied directly on the absence of a public prosecutor. *Id.* at 42.

Even more than parole-revocation proceedings or summary courts martial—both of which involve punishment, including imprisonment, imposed by the state—the right to publicly-funded counsel has no place in civil disputes between private parties. The

civil system would be upended if the state began selectively providing counsel to one side of a civil dispute. Indeed, selective provision of counsel would jeopardize the due process rights of the private litigants forced to square off against their opponent's state-funded counsel.

A court's use of civil contempt does nothing to change the character of purely-civil proceedings. Civil contempt is merely the mechanism through which *courts* police unruly litigants and enforce their orders. Civil contempt applies only after a neutral court concludes that a party has the ability, but has refused, to obey a lawful court order. *See, e.g.*, *United States v. Rylander*, 460 U.S. 752, 757 (1983) ("In a civil contempt proceeding such as this, of course, a defendant may assert a *present* inability to comply with the order in question. . . . Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action."). The state does not bring civil contempt actions, nobody can be "convicted" of civil contempt, and the civil contemnor does not face a punitive, fixed punishment. Detention, if any, lasts only as long as is necessary to coerce the contemnor into complying with the court's orders. The contemnor thus "carries the keys of his prison in his own pocket. He can end the sentence and discharge himself at any moment by doing what he had previously refused to do." *Gompers*, 221 U.S. at 442 (quotation omitted). Throughout, his adversary remains a private litigant. In such circumstances, state-paid counsel should not be required.

2. Indeed, disputes over child support payments perfectly illustrate the danger of extending the right

to state-paid counsel to civil contempt proceedings. Inserting the right to counsel into child support disputes on behalf of delinquent parents would put their children and the custodial parents at an extreme disadvantage. As the Court knows, "lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients' positions and to contest with vigor all adverse evidence and views." *Gagnon*, 411 U.S. at 787. In the proceedings below, as in many child support enforcement proceedings, neither petitioner nor Ms. Rogers were represented by counsel. Ms. Rogers had to navigate the legal system without professional assistance to obtain a court order enforcing petitioner's child support obligations. Her task would have been exponentially more difficult—and more intimidating—if, once she made it to an enforcement hearing, she had to square off against zealous counsel provided and paid for by the state to represent petitioner.

The Court need look no further than its own precedent to see how far reaching the right to counsel would become if it were extended to all child support enforcement proceedings where there is a possibility of civil contempt and detention. The right to counsel means the right to effective counsel, which is much more than the right to have a lawyer physically present at trial. The right to effective counsel includes, to provide a few examples:

- the right to be informed by counsel of any deportation consequences that might arise from a plea agreement, *Padilla v. Kentucky*, 130 S. Ct.

1473, 1486 (2010) ("counsel must inform her client whether his plea carries a risk of deportation");

- the right to have counsel fully investigate the accused's background in search of potential defenses and mitigating factors, *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) ("Counsel's conduct similarly fell short of . . . efforts to discover all *reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor."); *Porter v. McCollum*, 130 S. Ct. 447, 453 (2009) ("The decision not to investigate did not reflect reasonable professional judgment.");
- the right to have counsel present mitigating evidence to the adverse party and the court, *Wiggins*, 539 U.S. at 524-25 ("The lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the court at sentencing." (quoting 1 ABA Standards for Criminal Justice 4-4.1, commentary, 4-55 (2d ed. 1982)); and
- the right to be informed of the various advantages and disadvantages that come with a plea agreement, *Libretti v. United States*, 516 U.S. 29, 50 (1995).

It is difficult to imagine how the contours of effective counsel would be imported into the child support enforcement context. If delinquent parents receive the same right to counsel as criminal defendants, each delinquent parent's state-funded lawyer would, at the least, have to ferret out all available evidence of the delinquent parent's inability to pay child support. And because counsel's sole obligation would be to his client, counsel would only

uncover and produce information that helps the delinquent parent. The pro se mother, meanwhile, would be left to muster any contrary evidence on her own.

Further, the Court has consistently held that an integral component of the right to counsel is "the right to counsel at all critical stages of the criminal process." *Iowa v. Tovar*, 541 U.S. 77, 80-81 (2004). Presumably the "all critical stages" concept would also be imported into child support enforcement proceedings. That then raises the question of what constitutes a "critical stage" in a civil contempt proceeding for failure to pay child support. One critical stage in criminal proceedings is a plea negotiation, *see, e.g.*, *Padilla*, 130 S. Ct. at 1486 ("[W]e have long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel."), which is analogous to a settlement conference in a civil case. Both discussions, if they fail, lead to an enforcement proceeding.

Thus, if a delinquent parent facing the prospect of civil detention has the right to counsel, he also presumably has the right to counsel's assistance in negotiating away his past-due child support in a private settlement with the custodial parent. And if the state fails to provide counsel to the delinquent parent at this "critical stage" then its courts will be forever barred from detaining him for civil contempt. *See Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (holding that a state may never imprison a defendant, even for a probation violation, unless he was provided with counsel at his original proceeding). Petitioner's

rule would therefore not only require state-funded counsel to defend delinquent parents at enforcement proceedings, but would entitle them to the assistance of professional negotiators in haggling away past-due child support obligations. All this while pro se custodial parents are forced to muddle through the system on their own.

Further, even the core of the right to counsel that petitioner requests—representation at the contempt proceeding itself—would put pro se custodial mothers like Ms. Rogers at a serious disadvantage. Inability to comply with the court's order is the only defense to civil contempt. In child support cases, the only reason a delinquent parent would be unable to comply with the court's order would be his inability to pay the past-due child support. Yet that precise question—whether the delinquent parent can pay his child support—is the *only issue* in the entire proceeding. If the noncustodial parent can afford to pay but has not paid, then the court will order him to pay. If the noncustodial parent is unable to pay, by contrast, there is nothing the court can do. Delinquent noncustodial parents facing the prospect of detention-by-contempt would, therefore, effectively receive state-appointed counsel to persuade the court to clear out their *entire debt* of past-due child support.

In addition to making it easier for delinquent noncustodial parents to clear out their arrearage, petitioner's proposed rule would give noncustodial parents an extra incentive not to pay child support in the first place. Once noncustodial parents realize that not paying child support will lead to an enforcement proceeding in which they receive state-appointed counsel to advocate for their inability to

pay, many will (understandably) relish the prospect of going to court. They might as well roll the dice and hope that their state-funded lawyer is able to persuade the court to release them from their past-due obligations (and possibly future ones, too). After all, if they lose at the enforcement proceeding, they still only owe whatever is past-due. Nothing lost, nothing gained, as far as the delinquent parent is concerned.

3. This case exemplifies the already-endemic problem of delinquent parents who refuse to pay until forced to by the court. Petitioner has consistently refused to pay child support until coerced by detention. In June 2003, petitioner and Ms. Rogers agreed to an Order of Responsibility under which petitioner would pay approximately $50 in child support each week. Pet. App. 19a, 22a. But despite having consented to the order, petitioner immediately stopped paying child support and fell behind by over $760. Ms. Rogers was forced to haul petitioner to family court, which informed petitioner that he had 90 days to clear out his obligation or he would be jailed for contempt of court. Only then, after petitioner was facing the threat of detention, did he make four payments to Ms. Rogers totaling nearly $1100, clearing his debt and avoiding jail. Pet. App. 131a.

That pattern repeated for the next few years. Petitioner routinely refused to pay child support until Ms. Rogers dragged him to court and obtained a court order. In February 2004, petitioner was nearly $400 behind on his child support, so Ms. Rogers went to court and obtained an order holding petitioner in civil contempt and sending him to jail unless he paid his

debt. Pet. App. 23a-25a. After spending a couple of days in jail, petitioner paid all of his past-due child support and he was immediately released. Resp. Br. 11. This sequence of events repeated in October 2004 and February 2005. *Id.* The only change in petitioner's behavior was in February 2005, when he no longer tested the court's willingness to enforce its contempt finding with actual detention. After that finding of civil contempt (petitioner's fourth), he paid just before he was jailed. *Id.* If this is what it took for Ms. Rogers to obtain $50 per week, imagine her burden if, at each proceeding, she were required to face state-funded counsel.

Ms. Rogers is hardly alone in her frustrating effort to obtain child support payments. Much of the billions of dollars in child support past-due nationally is owed by noncustodial parents who are perfectly capable of paying their debts. "42 percent of nonresident fathers did not pay formal child support and had no apparent financial reason to shirk this responsibility." Elaine Sorenson & Chava Zibman, *Getting to Know Poor Fathers Who Do Not Pay Child Support*, 75 Soc. Serv. Rev. 420, 422 (2001). Indeed, many noncustodial parents could pay substantially more than courts currently order them to pay. *See, e.g.*, Maureen A. Pirog & Kathleen M. Ziol-Guest, *Child Support Enforcement: Programs and Policies, Impacts and Questions*, 25 J. Pol'y Analysis & Mgmt. 943, 973 (2006) (reviewing empirical studies).

Further, a study commissioned by the Michigan Supreme Court found that delinquent parents do whatever they can to conceal income. That study concluded that many delinquent parents "opt to work in the underground economy at least in part because

doing so enables them to shield their earnings from child support enforcement efforts." *Underground Economy*, *supra*, at 10. This only hurts the children because, as the study explained, they "absorb the deficit by doing without essentials that their parents should provide." *Id.*

Delinquent parents who work in the underground economy and conceal income will almost always resist efforts to collect child support. If the custodial parent calls the recalcitrant parent to demand payment and the income-hiding parent claims that he cannot pay, then civil contempt backed by the possibility of detention may be the *only* tool a family court possesses to shake the money loose. Providing state-funded counsel to represent these delinquent parents would gum up the process and put indigent custodial parents at an extreme disadvantage.

4. One of petitioner's *amici*, the National Association of Criminal Defense Lawyers, argues that, contrary to the above, providing counsel to delinquent parents in child support proceedings will have little-to-no measurable effect. It claims that "[e]ven in states where a right to counsel for indigents facing incarceration for civil contempt has been recognized, often the right is unenforced." NACDL Br. at 28. NACDL points to Pennsylvania, which recognized a right to counsel in civil contempt proceedings in *Commonwealth ex rel. Brown v. Hendrick*, 283 A.2d 722, 723-24 (Pa. Super. Ct. 1971). It notes that despite the court's holding in *Hendrick*, Pennsylvanians' right to counsel is not being consistently enforced, as evidence by a petition for relief filed with the Pennsylvania Supreme Court by

eighteen individuals denied access to counsel in Berks County. NACDL Br. at 28-29.

Some of the academic research cited by another of petitioner's *amici* found that "[i]n many of the courtrooms we watched, these attorneys would call out their client's name as the court room filled with cases, meeting the client for the first time just prior to the hearing." Rebecca May & Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices, Center for Family Policy & Practic*e, at 45 (2005) *available at* http://www.cffpp.org/ publications/LookAtArrests.pdf) (last checked January 27, 2011). Thus, the authors concluded:

> For many noncustodial parents, however, the costs add to an existing burden without a tangible gain. Lawyers with a high turnover in cases who have little time to get to know their clients stand little chance of building a case that could persuade a judge to be lenient, even when the facts of the case might merit leniency.

Id.

Petitioner's *amici's* claim that affording a right-to-counsel in civil child support disputes will be costless in practice is wrong, as explained above and in Part II, below. But if the picayune right that these *amici* describe is all petitioner seeks here, then petitioner's demand for counsel is truly senseless. It would accomplish nothing to require states to provide counsel that sit in family court all day and periodically stand at a lectern—clueless about the facts, having met their client five minutes prior—in order to "represent" the delinquent parent during his

contempt hearing. Such a requirement would impose a major expense on already-cash-strapped states, without making the proceeding any fairer or more accurate. It would be formalism at its worst—a meaningless, costly rule that yields no discernable gain.

Petitioner, however, is obviously not asking for such an empty right. Instead, he is seeking to extend the right to counsel currently available in *criminal* proceedings to *this* case—a civil contempt proceeding to enforce a child support obligation. And under *that* right, Ms. Rogers, the custodial parent here, would be put at an extreme disadvantage, ultimately to the detriment of their child.

5. Accordingly, petitioner's request that this Court extend the right to counsel to civil contempt proceedings for the enforcement of child support payments should be denied.

II. CIVIL CONTEMPT WITH THE THREAT OF INCARCERATION IS A HIGHLY-EFFECTIVE ENFORCEMENT TOOL THAT STATES WILL NO LONGER BE ABLE TO USE IF IT IS ENCUMBERED WITH THE RIGHT TO COUNSEL.

In addition to making it harder for pro se mothers to collect child support, creating a right to counsel in civil contempt cases would impermissibly interfere with state and congressional policy choices. Federalism requires that states be permitted to make reasonable policy choices in pursuit of permissible goals. "States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal

constitutional guarantees." *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008).

Congressional policy choices also deserve respect. "[I]t is not the role of this Court to reconsider the wisdom of a policy choice that Congress has already made." *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 240 (1986) (Powell, J., concurring in part and dissenting in part). On disputed questions of policy, it is the role of Congress, not the courts, "to decide which policy choice is the better one." *Arkansas v. Oklahoma*, 503 U.S. 91, 114 (1992).

Both of these fundamental principles militate in favor of affirming the Supreme Court of South Carolina. Civil contempt backed by the threat of detention is a powerful tool for collecting child support from unwilling noncustodial parents. Encumbering this policy tool—which is used by many states and has the imprimatur of Congress—with a categorical right to counsel will undermine its effectiveness and, in many states, lead to its elimination.

1. Many states use civil contempt backed by the threat of detention as a tool for collecting child support from the most recalcitrant noncustodial parents. This tool has proven highly effective at shaking money loose from noncustodial parents who otherwise would not pay a cent. Although few contemnors are ever actually jailed, the possibility of jail is a key component of the system. And for some delinquent parents, a few days of detention are required before they will relent and honor their child support obligations.

The Department of Health and Human Services's Office of Child Support Enforcement recently

compiled the results of a survey of state child support enforcement authorities. The survey confirms both that civil contempt is a frequently used and highly effective tool for collecting child support. Of the 18 states that responded to the survey, which is attached as Appendix A,[2] all but one reported that they use civil contempt to enforce child support orders. And the only state that did not report use of civil contempt, South Dakota, uses "Order to Show Cause" hearings which result in some noncustodial parents being jailed.

Most of the states provided detailed responses, which shed light on the effectiveness of civil contempt backed by the threat of detention:

- Colorado uses civil contempt in a tiny fraction of its cases—typically about 2400 delinquent parents are held in contempt out of around 125,000 child support enforcement cases (approximately 2%). *Amici* App. 2a. The Colorado authorities were not sure what portion of this 2% actually spend time in jail, "but it is quite low"; contempt is typically used only after less restrictive actions fail. *Id.* Colorado's authorities "believe it can be an effective tool with certain obligors" and finds that it fits "nicely into a problem-solving court concept." *Id.* at 3a.

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[2] The attached table was prepared using an excel spreadsheet that was created by the Office of Child Support Enforcement to collect responses to a survey conducted by the National Council of Child Support Directors. The content of the attached table is identical to the Office of Child Support Enforcement's spreadsheet.

- Connecticut uses civil contempt "routinely when the obligor is 30 days delinquent" and "more often when income withholding is not an appropriate remedy." *Amici* App. 3a. But like in Colorado, the percentage of contemnors who actually go to jail "is not large" because—just like petitioner after his first four child support enforcement proceedings in South Carolina—"most will pay a purge amount in settlement rather than go to jail." *Id.* at 4a.
- Florida uses contempt on a much wider scale. In fiscal year 2009-10, its enforcement authorities "filed over 59,000 motions for contempt." *Amici* App. 4a. Florida reports that child support payments total 200% to 400% of the total state funds invested in enforcement. *Id.* at 4a-5a.
- Illinois and Indiana, for their part, routinely rely on civil contempt to collect past-due child support. Neither, however, systematically provides counsel to the delinquent parent. As Indiana's enforcement authorities explained, counsel is provided in only "a very low number of cases." *Amici* App. 5a-6a.
- Kentucky reports that it "often" uses civil contempt proceedings to enforce noncustodial parents' child support obligations. *Amici* App. 6a. It further reports that civil contempt "is a highly effective collection tool." *Id.* at 7a.
- Massachusetts, like most of the other states, uses detention-backed civil contempt for only a small number of cases. It reports that only "5-6% of the obligated cases" are "brought on civil contempt" with "about 5% go[ing] to jail." *Amici* App. 7a. This tool—which is reserved for the worst

offenders—is highly effective, yielding collections of about "$2 million/year in lump-sum payments." *Id.*

- Minnesota reports that use of civil contempt to collect past-due child support is "common but not routine." *Amici* App. 7a. But like in South Carolina, "findings of contempt are stayed to allow the [non-custodial parent] to purge the finding by making payments" which means, in practice, that it "is uncommon for someone to be put in jail." *Id.* And like the other states, Minnesota has "found that collections increase after findings of contempt." *Id.*
- Oklahoma uses civil contempt only as "a last ditch remedy." *Amici* App. 9a. It has found that civil contempt "is effective when nothing else will work and the [noncustodial parent] is working for cash in the underground economy." *Id.*
- Oregon uses civil contempt backed by occasional detention to collect child support in some of its counties. Those counties have found that when they "combine contempt actions with a problem solving approach" there has been "a 200% increase in collection." *Amici* App. 10a. Further, although Oregon does not collect detailed data, it has observed "a ripple effect in communities with contempt programs that suggests an increase in collections" generally. *Id.*
- Texas, like the other states, uses detention only as a last resort. It is within "the circuit court judge's discretion whether to impose jail time if the [noncustodial parents] do not comply with the court's order after being provided an opportunity to purge themselves of a contempt finding." *Amici*

App. 12a. Actual jailing, however, is hardly "routine," as noncustodial parents "are provided multiple opportunities to comply with the order before jail time may be imposed, and some judges are more reluctant than others to place NCPs in jail." *Id.*

- Utah likewise uses civil contempt as an enforcement tool, "but the number of people who go to jail is very small." *Amici* App. 12a. There too, the courts use detention only "as a last resort after all administrative and judicial remedies have failed." *Id.* at 13a.
- Virginia uses "civil contempt as a last resort to collect past-due child support after all other enforcement mechanisms have been exhausted." *Amici* App. 13a. Whether indigent parents are provided with court-appointed counsel "varies by jurisdiction." Of Virginia's 359,000 cases involving over 440,000 children, only 3,300 noncustodial parents (less than 1% of the total caseload) were found in civil contempt and sentenced to confinement with a purge clause. *Id.* This procedure has proven extremely effective, with noncustodial parents paying "approximately $13 million either before a court hearing to avoid a contempt finding or after a court hearing to purge the contempt finding and either avoid" being sent to jail or are "released from jail." *Id.* at 13a-14a.

The survey also provides a preview of what is likely to happen if the Court creates a categorical right to counsel in civil contempt proceedings backed by possible detention. Nearly five years ago, the New Jersey Supreme Court held "that the Fourteenth

Amendment Due Process Clause mandates the appointment of counsel to assist parents found to be indigent and facing incarceration at child support enforcement hearings." *Pasqua v. Council*, 892 A.2d 663, 674 (N.J. 2006). New Jersey—which, like many states, is facing serious budgetary problems in the wake of the greatest economic crisis since the Great Depression—has been unable to fund a costly new counsel program for delinquent parents. As New Jersey officials explained in their survey response, "we are required to do an assessment of indigence once the individual is arrested and if [they are] found to be indigent then they are released. There has been no ability to fund a representation program and pro bono was denied." *Amici* App. 8a. The New Jersey Supreme Court's creation of a categorical right to counsel thus forced the state to stop using this effective enforcement tool.

This survey confirms that civil contempt is a powerful tool to ensure compliance with child support orders. In these proceedings, delinquent parents are rarely imprisoned. But the mere *threat* of imprisonment is a highly effective tool for ensuring that parents who a court concludes *can* pay to support their children actually *do* pay. If the Court creates a constitutionally-recognized right to counsel at the national level, then countless states will doubtless follow New Jersey's lead and abandon this powerful tool, ultimately to the detriment of poor mothers and children throughout the country.

2. The Court is also obliged to give deference to congressional choices, particularly when those choices are made in the context of a comprehensive federal-state regulatory framework like child support

enforcement. As the Solicitor General's brief explains at pages 29-32, Congress has consistently refused to fund counsel for delinquent noncustodial parents in child support enforcement proceedings despite its awareness that states regularly use detention as an enforcement tool. *See, e.g.*, S. Rep. No. 98-387, at 23 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397, 2420 (statute does not provide federal funding for "defense counsel for absent parents" or "incarceration of delinquent obligors"); Expenditures For Which Federal Financial Participation Is Not Available, 45 C.F.R. § 304.23 (i) and (j) (no federal funding for "[t]he costs of counsel for indigent defendants in IV-D actions" or "[a]ny expenditure for jailing of parents in child support enforcement cases"); Prohibition of Federal Funding of Costs of Incarceration and Counsel for Indigent Absent Parents, 52 Fed. Reg. 32,130 32,130 (Aug. 26, 1987) (Federal "policy since the inception of the [Title IV-D] program has been that costs of incarceration of delinquent obligors and costs of defense counsel are not necessary and reasonable costs associated with the proper and efficient administration of the Title IV-D program.").

Amici Curiae Members of Congress agree with the Solicitor General that the Court should respect "the balance struck by Congress and the Secretary in enacting and administering the Title IV-D program." S.G. Br. at 29 (citing *Middendorf*, 425 U.S. at 43 ("[W]e must give particular deference to the determination of Congress, made under its authority to regulate the land and naval forces, U.S. Const., Art. I, § 8, that counsel should not be provided in summary courts-martial."); *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 319-320 ("This deference to congressional judgment must be afforded

even though the claim is that a statute Congress has enacted effects a denial of the procedural due process guaranteed by the Fifth Amendment.")). The Court should thus reject petitioner's request for a categorical right to counsel in civil contempt proceedings whenever there is a possibility of detention.

III. THE COURT SHOULD DECLINE TO OVERRULE LONG-SETTLED PRECEDENT DISTINGUISHING BETWEEN CIVIL AND CRIMINAL CONTEMPT.

Finally, creating a categorical right to counsel in civil contempt proceedings whenever there is a possibility of detention would erase the established line between civil contempt and criminal contempt and would require overturning a line of precedent that dates back to *Gompers*, 221 U.S. at 442. The Court should decline to overrule these cases, which have proved logical and workable for over a century. *See, e.g., Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 130 S. Ct. 1605, 1612 (2010) ("[I]n the context of stare decisis, this Court has suggested precedents tend to gain, not lose, respect with age.").

Criminal contempt "is a crime in the ordinary sense" and its sanctions are "criminal penalties" that "may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings." *United Mine Workers v. Bagwell*, 512 U.S. 821, 826 (1994). Sanctions for *civil* contempt, however, are "designed to compel future compliance with a court order," "are considered to be coercive and avoidable through obedience, and thus may be imposed in an *ordinary civil proceeding* upon notice and an opportunity to be

heard. Neither a jury trial nor proof beyond a reasonable doubt is required." *Id.* at 827 (emphasis added). Indeed, *Bagwell* went so far as to describe someone exactly like petitioner—a former spouse who refuses to live up to his legal obligations—as the paradigmatic civil contemnor: "The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command such as an order '*to pay alimony* . . . .'" *Id.* at 828 (quoting *Gompers*, 221 U.S. at 442) (emphasis added).

Not only has the Court always carefully distinguished civil contempt from criminal contempt, it has even done so in the precise context presented by this case. In *Hicks ex rel. Feiock v. Feiock*, respondent was a noncustodial parent with a history of sporadic payment of child support. 485 U.S. 624, 627 (1988). Like Ms. Rogers, the custodial parent took her former husband to court to enforce his child support obligations. *Id.* And like the South Carolina family court below, the court informed the noncustodial parent that if he did not begin making monthly child support payments, he would be held in contempt of court and jailed. *Id.*

The noncustodial parent continued to miss his child support payments, so his former wife again took him to court. There, she "made out a prima facie case of contempt against respondent by establishing the existence of a valid court order, respondent's knowledge of the order, and respondent's failure to comply with the order." *Id.* The noncustodial parent failed to prove inability to pay and was sentenced to a 25-day jail sentence, which was suspended on the condition that he not miss any more child support

payments. *Id.* at 628. Respondent appealed, arguing that because the contempt proceeding was effectively criminal in nature, California's evidentiary presumption that the noncustodial parent is able to pay his child support violated his due process rights. *Id.* (citing Cal. Civ. Proc. Ann. § 1209.5 (West 1982)).

The Court rejected respondent's argument. First, it explained that "state law provides strong guidance about whether or not the State is exercising its authority 'in a nonpunitive, noncriminal manner,'" such that "one who challenges the State's classification of the relief imposed as 'civil' or 'criminal' may be required to show 'the clearest proof' that it is not correct as a matter of federal law." 485 U.S. at 631 (quoting *Allen v. Illinois*, 478 U.S. 364, 368-69 (1986)). That showing must be made, the Court continued, by looking at the type of relief the state granted. If "the relief provided is a sentence of imprisonment," then "it is remedial if 'the defendant stands committed unless and until he performs the affirmative act required by the court's order,' and is punitive if 'the sentence is limited to imprisonment for a definite period.'" *Id.* at 632 (quoting *Gompers*, 221 U.S. at 442). The touchstone, the Court concluded, is whether the penalty is conditional or unconditional. A conditional penalty is civil "because it is specifically designed to compel the doing of some act." *Id.* at 633.[3]

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[3] In support of this statement, which the Court considered to be beyond dispute, it included the following citations: *Penfield Co. v. SEC*, 330 U.S. 585, 593 (1947); *Rylander*, 460 U.S. 752 ; *Nye v. United States*, 313 U.S. 33 (1941); *Fox v. Capital Co.*, 299 U.S. 105 (1936); *Lamb v. Cramer*, 285 U.S. 217 (1932); *Oriel v. Russell*, 278 U.S. 358 (1929); *Ex parte Grossman*, 267 U.S. 87

Bearing these principles in mind, the Court held that the "Due Process Clause" does "not necessarily prohibit the State from employing" a rebuttable presumption that a delinquent parent is able to comply with a court order requiring him to pay child support, so long as "respondent would purge his contempt judgment by paying off his arrearage." *Id.* at 640. It noted that in a criminal proceeding "such a statute would violate the Due Process Clause because it would undercut the State's burden to prove guilt beyond a reasonable doubt," whereas in a civil contempt proceeding—defined as any proceeding where the contemnor can purge the contempt finding by paying his arrearage—the statute "would be constitutionally valid." *Id.* at 637-38.

The Court's holding in *Hicks* controls this case. Petitioner's detention was conditional. He could purge his contempt at any time by paying off his arrearage—just as he did the four previous times he was held in contempt. He therefore was not, as *Hicks* says, entitled to the protections reserved for criminal proceedings.

Indeed, Justice O'Connor, writing for the three dissenting justices in *Hicks* (who agreed with the general analysis but disagreed about remanding to the California courts) was even more adamant about enforcing the line between criminal contempt and civil contempt in child support enforcement proceedings:

(footnote continued)

(1925); *Doyle v. London Guarantee Co.*, 204 U.S. 599 (1907); *In re Christensen Engineering Co.*, 194 U.S. 458 (1904); *Bessette v. W.B. Conkey Co.*, 194 U.S. 324 (1904).

> Contempt proceedings often will be useless if the parent seeking enforcement of valid support orders must prove that the obligor can comply with the court order. The custodial parent will typically lack access to the financial and employment records needed to sustain the burden imposed by the decision below, especially where the noncustodial parent is self-employed, as is the case here. Serious consequences follow from the California Court of Appeal's decision to invalidate California's statutory presumption that a parent continues to be able to pay the child support previously determined to be within his or her means.

485 U.S. at 644-45 (O'Connor, J., dissenting with Rehnquist, C.J., and Scalia, J.). Likewise, custodial parents will "typically lack access to the financial and employment records needed" to resist professional counsel provided for delinquent parents "especially where" the custodial parent is pro se, "as is the case here." *Id.* In short, "[s]erious consequences" would "follow" from creating a categorical right to counsel in civil contempt cases where there is a possibility of detention. *Id.*

Petitioner provides no policy rationale or legal basis even arguably compelling enough to justify discarding the distinction between civil and criminal contempt and overturning *Bagwell, Hicks*, *Gompers*, and the many cases cited therein. In particular, petitioner has not demonstrated why the Court should take such a dramatic step to provide delinquent noncustodial parents with state-funded counsel to resist pro se mothers trying to collect past-due child support. Doing so would only hurt indigent

children, for whom that support is a crucial "lifeline." 155 Cong. Rec. at S10705-06 (statements of Senators Kohl and Rockefeller).

CONCLUSION

The decision of the South Carolina Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX

COMPENDIUM OF RESPONSES COLLECTED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF CHILD SUPPORT ENFORCEMENT (DECEMBER 28, 2010)

The below table is adapted from a spreadsheet compiled by the U.S. Department of Health and Human Services Office of Child Support Enforcement (OCSE). The spreadsheet contains responses by many states' child support enforcement authorities to a survey distributed through the National Council of Child Support Directors' listserv. The OCSE informed undersigned counsel that it did not conduct the survey itself and has not verified the responses.

The table below reproduces the content of OCSE's spreadsheet verbatim.

State	Response to NCCSD Listserv
Alabama	Uses civil contempt as an enforcement tool; Noncustodial indigents facing contempt where incarceration is a possibility has a right to an attorney. It's uncertain how many of them accept the service; Amount collected from low income obligors is unknown. Statistics on effectiveness not available.
Alaska	No Response
Arizona	No Response
Arkansas	No Response
California	No Response

State	Response to NCCSD Listserv
Colorado	We do use contempt as an enforcement tool in Colorado. We process about 2400 contempts per year out of around 125,000 ordered cases. While this works out to a contempt rate of 2%, it is probably a bit lower given that we have cases opening and closing throughout the year, thus the denominator is greater than 125,000. The courts typically will not order legal representation for the obligor in the case of a remedial contempt action as it does not involve jail time. However, if the county files a punitive contempt action that can lead to jail time, the courts will order public representation in appropriate cases, as the obligor may lose his/her freedom. We don't have any statistics on the number that go to jail, but it is quite low; some Magistrates order ankle-bracelets and other less restrictive actions. We also don't have demographic or collection statistics. Given that our Magistrates have quite a bit of latitude in the contempt process, the effectiveness of this remedy depends in large part on the actions and attitude of the

State	Response to NCCSD Listserv
	Magistrate, as well as case preparation. Thus, it is quite effective in some jurisdictions, less so in others, and a challenge in some. We believe it can be an effective tool with certain obligors, thus we try to showcase best practices with regard to contempts and to educate the magistrates on their use. Our CSE Judicial Liaison who works out of State Judicial, and thus is considered one of "them", has been very active in persuading and proselytizing in this regard. The contempt [sic] can fit nicely into a problem-solving court concept.
Connecticut	In your state, do you use civil contempt as an enforcement tool? Yes. If yes, can you provide information on how often it is used? It is used routinely when the obligor is 30 days delinquent, more often when income withholding is not an appropriate remedy. For example – what percent of your caseload is brought on civil contempt? Whenever there is a delinquency, our cooperating agency within the Judicial Branch issues a standard form which requests all appropriate remedies including contempt, license suspension,

State	Response to NCCSD Listserv
	withholding, etc. Are any given publicly-funded representation? Yes, if indigent. What percent go to jail? Don't have exact percentage, but it is not large; most will pay a purge amount in settlement rather than go to jail. What are the demographic characteristics (incomes) of those brought on civil contempt? Across the board – it is the standard practice if income withholding doesn't work. How much do you collect from low income obligors who are brought on civil contempt and do you have statistics on the effectiveness of civil contempt procedures for collecting support from low income obligors? No.
Delaware	No Response
District of Columbia	No Response
Florida	In your state, do you use civil contempt as an enforcement tool? Yes If yes, can you provide information on how often it is used? In FFY 09/10 [sic] we filed over 59,000 motions for contempt Are any given publicly-funded representation? No, Florida is one of the few states that does not provide representation to the obligor. How much do you collect from low income obligors who are

State	Response to NCCSD Listserv
	brought on civil contempt and do you have statistics on the effectiveness of civil contempt procedures for collecting support from low income obligors? Florida return [sic] on investment for this enforcement tool varies by circuit. In general it can from [sic] $2.00 to $4.00 for each dollar spent by the program. We are in the process of completing a detailed analysis by county, which should be completed by the end of January.
Georgia	No Response
Guam	No Response
Hawaii	No Response
Idaho	No Response
Illinois	In your state, do you use civil contempt as an enforcement tool? Yes, through [sic] it is not our primary tool. If yes, can you provide information on how often it is used? No statistics are readily available. For example – what percent of your caseload is brought on civil contempt? Not readily available. Are any given publicly-funded representation? Not to my knowledge, though different court units have different approaches. In Cook County, there is a not-for-profit attorney-staffed help desk for parents to use. What percent

State	Response to NCCSD Listserv
	go to jail? Unknown, though the IV-D Agency has made it clear that jailing of low-income fathers is not the goal of the IV-D program. What are the demographic characteristics (incomes) of those brought on civil contempt? Unknown. How much do you collect from low income obligors who are brought on civil contempt and do you have statistics on the effectiveness of civil contempt procedures for collecting support from low income obligors? Unknown, through acecdotally [sic] we do not find that contempt generates significant collections in most cases. There are some exceptions, where the part is in arrears [sic]
Indiana	In your state, do you use civil contempt as an enforcement tool? YES Are any given publicly-funded representation? YES, BUT ONLY ON A VERY LOW NUMBER OF CASES.
Iowa	No Response
Kansas	No Response
Kentucky	In response to the e-mail regarding civil contempt proceedings as an enforcement tool, we do use this tool often. In some of the cases a GAL is appointed and paid for with state public funds. However, we

State	Response to NCCSD Listserv
	do not have the ability to provide you with the statistical data you ask for. Based on our experience, it is a highly effective collection tool used by the majority of the county attorneys under contract to the CSE program.
Louisiana	No Response
Maine	No Response
Maryland	No Response
Massachussetts	5-6% of the obligated caseload is brought on civil contempt; about 5% go to jail. We have collections on all contempts not necessarily low-income obligors [sic] – we collect about $2 million/year in lump-sum payments. *Additional Data Provided*
Michigan	No Response
Minnesota	In MN we use contempt as an enforcement [sic]. I would describe its use as common but not routine. Typically, findings of contempt are stayed to allow the NCP to purge the finding by making payments. It is uncommon for someone to be put in jail. I do not have answers to the specific questions below. We have found that collections increase after findings of contempt.
Mississippi	No Response
Missouri	No Response
Montana	No Response

State	Response to NCCSD Listserv
Nebraska	No Response
Nevada	No Response
New Hampshire	No Response
New Jersey	Civil contempt is used as an enforcement took [sic], as a result of a lawsuit several year ago [sic] (March 8, 2006, the Supreme Court in Pasqua v. Council, 186 N.J. 127 (2006) ("Pasqua")) we are required to do an assessment of indigence once the individual is arrested and if found to be indigent then they are released. There has been no ability to fund a representation program and pro bono was denied. In the state of New Jersey, constitutional authority provides sheriff officers with arrest authority on civil warrants. The child support program mandates, under NJ Court Rule, civil warrants can be issued on child support cases for failure to appear, comply and failure to pay child support, as ordered by the court. In FFY10, NJ issued approximately 40,300 warrants statewide. In FFY10, the Sheriff Child Support Warrant Program executed 28,600 warrants statewide.

State	Response to NCCSD Listserv
	In FFY10, the Sheriff Child Support Warrant Program resulted in statewide child support collections of approx $13.73 million dollars. In FFY10, the Sheriff Child Support Warrant Program conducted two (2) statewide child support sweeps resulting in 1,900 warrant executions totaling approximately $490k in collections. In FFY10, approximately $1.5 million dollars was reimbursed statewide to county general funds to offset the administrative costs of the program.
New Mexico	No Response
New York	No Response
North Carolina	No Response
North Dakota	No Response
Ohio	No Response
Oklahoma	OK uses civil contempt as a last ditch remedy and believes it is effective when nothing else will work and the NCP is working for cash or in the underground economy. However, we do not have statistical information on this type of remedy in our system.
Oregon	In your state, do you use civil contempt as an enforcement tool? Yes If yes, can you provide information on how often it is used? Unknown For example –

State	Response to NCCSD Listserv
	what percent of your caseload is brought on civil contempt? Are any given publicly-funded representation? Yes if incarceration is plead [sic] as a potential remedy What percent go to jail? Unknown What are the demographic characteristics (incomes) of those brought on civil contempt? Unknown How much do you collect from low income obligors who are brought on civil contempt and do you have statistics on the effectiveness of civil contempt procedures for collecting support from low income obligors? We do not isolate results based upon income. When we combine contempt actions with a problem solving approach we have seen a 200% increase in collection. Counties who have contempt programs that do not have a specific problem solving element also see an increase in collection but we don't currently have hard data on that. There is also a ripple effect in communities with contempt programs that suggests an increase in collections
Pennsylvania	No Response
Puerto Rico	No Response
Rhode Island	No Response
South Carolina	In your state, do you use civil

State	Response to NCCSD Listserv
	contempt as an enforcement tool? Yes. If yes, can you provide information on how often it is used? South Carolina does not capture that information. For example – what percent of your caseload is brought on civil contempt? Are any given publicly-funded representation? None. What percent go to jail? What are the demographic characteristics (incomes) of those brought on civil contempt? South Carolina does not capture that information. How much do you collect from low income obligors who are brought on civil contempt and do you have statistics on the effectiveness of civil contempt procedures for collecting support from low income obligors? South Carolina does not capture that information.
South Dakota	Unfortunately, we do not have the capability to track all of the demographics and income statuses of the individuals that are summoned to appear in court for Order to Show Cause hearings and/or the actual number that are placed in custody. We did have 3,900 successful show cause enforcement actions in the last year (this may include multiple actions against the same NCP),

State	Response to NCCSD Listserv
	but I can not [sic] tell you the number of NCPs that had been jailed from that figure. We have 43,000 active cases.
Tennessee	No Response
Texas	Cause actions to be heard by the circuit court. It is the circuit court judge's discretion whether to impose jail time if the NCPs do not comply with the court's order after being provided an opportunity to purge themselves of a contempt finding. I would not characterize the actual jailing of NCPs as "routine" – typically NCPs are provided multiple opportunities to comply with the order before jail time may be imposed, and some judges are more reluctant than others to place NCPs in jail.
Utah	Civil contempt is used as an eforcement tool [sic], but the number of people who go to jail is very small. One thing to keep in mind is that the decision to find a non-custodial parent in contempt is exclusively in the hands of the district court judges. It is our office's preference to not have people spend time in jail for not paying their child support obligations, but for some it is the only enforcement remedy that is left. Typically, the court uses this

State	Response to NCCSD Listserv
	as a last resort after all administrative and judicial remedies have failed
Vermont	No Response
Virgin Islands	No Response
Virginia	"The Virginia Division of Child Support Enforcement does use civil contempt as a last resort to collect past-due child support after all other enforcement mechanisms have been exhausted. The Division's caseload includes more than 359,000 cases involving over 440,000 children. In 2010, the Division filed approximately 61,390 court pleadings, which included 33,884 motions for show cause (55% of total pleadings). Roughly 3,300 noncustodial parents (10% of the show cause actions and less than 1% of the Division's caseload) were found in civil contempt and sentenced to confinement with a purge clause. In those cases, courts ordered approximately 725,230 total jail days; however, the number of days actually served was significantly lower as the majority of individuals paid the purge amount. Noncustodial parents paid approximately $13 million either before a court hearing to avoid a contempt finding or after a court

State	Response to NCCSD Listserv
	hearing to purge the contempt finding and either avoid or be released from jail. Whether indigent noncustodial parents are provided court-appointed counsel in contempt actions varies by jurisdiction. Approximately 60% of jurisdictions provide court-appointed counsel. The Division does not have data correlating income and civil contempt actions."
Washington	No Response
West Virginia	No Response
Wisconsin	No Response
Wyoming	In Wyoming, we use civil contempt as an enforcement tool. We are a judicial state, so all contempt actions are decided by a District Court judge. We do not keep any statistics on civil contempt. I would be able to give you anecdotal information only.
	No Response
	No Response
	No Response