

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,	)	No. CR-18-0047-PR
	)	
Appellee,	)	Court of Appeals No.
	)	1 CA-CR 16-0838
v.	)	
	)	Coconino County Superior
SUSAN JOY JACOBSON,	)	Court No. S0300CR201500613
	)	
Appellant.	)	
	)	

---

**BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF APPELLANT**

David J. Euchner, No. 021768  
Pima County Public Defender’s Office  
  
33 N. Stone Ave. #2100  
Tucson, Arizona 85701  
(520) 724-6800  
[David.Euchner@pima.gov](mailto:David.Euchner@pima.gov)

Nathan S. Benedict, No. 029879  
Salt River Pima-Maricopa Indian  
Community Defense Advocate Office  
10005 E. Osborn Rd.  
Scottsdale, Arizona 85256  
(480) 362-5737  
[nathan.benedict@srpmic-nsn.gov](mailto:nathan.benedict@srpmic-nsn.gov)

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....3

INTRODUCTION .....5

INTERESTS OF *AMICUS CURIAE* .....6

ARGUMENTS.....7

    I. Evidence of a defendant’s PTSD is relevant and admissible. It does not merely recapitulate the defendant’s allegations of past abuse or vouch for the defendant’s own testimony. ....7

    II. The rule in *Mott* is inapplicable because evidence of the defendant’s PTSD does not serve to negate *mens rea* but rather to show the reasonableness of the defendant’s beliefs and relevant character-trait evidence.....12

    III. Even if PTSD evidence serves to negate *mens rea*, the rule in *Mott* has been overturned by statute. The offense in *Mott* pre-dated significant legislative changes which allow evidence of diminished capacity to be used to negate *mens rea*. ....15

CONCLUSION.....19

## TABLE OF AUTHORITIES

### Cases

<i>Chestnut v. State</i> , 538 So.2d 820 (Fla. 1989) .....	13
<i>State ex rel. Thomas v. Duncan</i> , 216 Ariz. 260 (App. 2007) .....	12
<i>State v. Carlson</i> , 237 Ariz. 381 (2015) .....	10
<i>State v. Carson</i> , __ Ariz. __, 2018 WL 1056421 (2018).....	12, 13, 18
<i>State v. Christensen</i> , 129 Ariz. 32 (1981).....	8
<i>State v. Daws</i> , 662 N.E.2d 805 (Ohio App. 1994).....	13
<i>State v. Delgado</i> , 232 Ariz. 182 (App. 2013) .....	8
<i>State v. Hines</i> , 696 A.2d 780 (N.J. App. Div. 1997) .....	11
<i>State v. Holle</i> , 240 Ariz. 300 (2016) .....	18
<i>State v. Jacobson</i> , __ Ariz. __, 2017 WL 6523707 (App. 2017) .....	passim
<i>State v. Janes</i> , 850 P.2d 495 (Wash. 1993).....	10, 11
<i>State v. Johnson</i> , 229 Ariz. 475 (App. 2012) .....	17
<i>State v. King</i> , 222 Ariz. 636 (App. 2009), <i>vacated</i> , 225 Ariz. 87 (2010).....	19
<i>State v. Leteveh</i> , 237 Ariz. 516 (2015) .....	9, 16
<i>State v. Lua</i> , 237 Ariz. 301 (2015).....	19
<i>State v. Lupoli</i> , 234 P.3d 117 (Or. 2010) .....	8, 9, 10
<i>State v. Machado</i> , 224 Ariz. 343 (App. 2010), <i>aff'd</i> , 226 Ariz. 281 (2011) .....	5
<i>State v. Mizell</i> , 773 So.2d 618 (Fla. App. 2000).....	13
<i>State v. Moody</i> , 208 Ariz. 424 (2004).....	5
<i>State v. Moran</i> , 151 Ariz. 378 (1986).....	10
<i>State v. Mott</i> , 187 Ariz. 536 (1997) .....	passim
<i>State v. Oliver</i> , 158 Ariz. 22 (1988).....	5
<i>State v. Ortiz</i> , 158 Ariz. 528 (1988).....	14
<i>State v. Richter</i> , 243 Ariz. 131 (App. 2017) .....	passim
<i>State v. Schantz</i> , 98 Ariz. 200 (1965) .....	15, 17
<i>State v. Vogel</i> , 207 Ariz. 280 (App. 2004).....	11
<i>State v. Wilcox</i> , 436 N.E.2d 523 (Ohio 1982).....	13
<i>State v. Wright</i> , 214 Ariz. 540 (App. 2007).....	14

### Statutes

A.R.S. §13-103.....	18
A.R.S. §13-105.....	16
A.R.S. §13-205.....	18
A.R.S. §13-502.....	15, 16, 17, 18

A.R.S. §13-503.....17  
A.R.S. §13-1407.....18

**Other Authorities**

*Post-traumatic Stress Disorder v. Pseudo Post-traumatic Stress Disorder*, 56 Ala.  
*Law.* 90, 92-93 (1995).....11

**Constitutional Provisions**

Ariz. Const. art. II §4 .....5  
Ariz. Const. art. II §24 .....5

## INTRODUCTION

Criminal defendants have a federal constitutional right to present a complete defense. *State v. Machado*, 224 Ariz. 343, 351 ¶12 (App. 2010), *aff'd*, 226 Ariz. 281 (2011) (citations omitted); *see also State v. Richter*, 243 Ariz. 131, 135 ¶12 (App. 2017). These rights are also protected by Ariz. Const. art. II, §§4, 24. Rules of evidence and other rules may be applied in order to ensure an orderly trial, but they “may not be applied mechanistically to defeat the ends of justice.” *Machado*, 224 Ariz. at 351 ¶13 (citations omitted); *see also State v. Moody*, 208 Ariz. 424, 458 ¶137 (citations omitted) (limits on cross-examination are unconstitutional “when they deny the opportunity to present ‘information which bears...on the issues in the case.’”).

In this case, lower courts denied Susan Jacobson’s right to present a complete defense. *State v. Jacobson*, \_\_ Ariz. \_\_, 2017 WL 6523707 (“*Opinion*”). In so doing, Division One misapplied existing law and contradicted the recent Division Two opinion in *Richter*, creating a divisional split this Court must resolve. *Jacobson*’s foundational error was assuming that Jacobson could not present her evidence because of its lack of value, thereby disregarding the admonition that “judges must be careful not to ‘bootstrap [themselves] into the jury box via evidentiary rules.’” *Machado*, 224 Ariz. at 359 ¶43 (citations omitted). Its secondary error was its failure to appreciate *Richter*’s distinction between what constitutes a defense and what

constitutes evidence that is admissible for a different purpose. But, most importantly, Arizona courts have consistently failed to recognize that this Court's opinion in *State v. Mott*, 187 Ariz. 536 (1997), was interpreting old case law and the 1991 statutory scheme, and thus it had no occasion to interpret statutory changes in 1993 and 1997 (after Mott's offense) that should have impacted the reasoning in later cases.

This Court should fix the problems with its *Mott* jurisprudence. The "*Mott* rule" has not entirely been abrogated by statute, but it now applies only to affirmative defenses and not to defenses that deny the culpable mental state. The rule proposed in this brief will affirm both the statute's plain language and the defendant's constitutional right to present a defense.

### **INTERESTS OF *AMICUS CURIAE***

Arizona Attorneys for Criminal Justice (AACJ), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and

mutual assistance, and fostering public awareness of citizens’ rights, the criminal justice system, and the role of the defense lawyer.

*Amicus* offers this brief in support of Appellant because the issue presented here affects countless defendants who are wrongfully charged or overcharged because of an interpretation of *Mott* that allows prosecutors to ask jurors to assume a mental state while denying defendants the opportunity to defend themselves. *Amicus* asks this Court to recognize statutory changes that postdate Mott’s offense date—changes that appear to have gone unnoticed—and update its jurisprudence on diminished capacity and voluntary intoxication accordingly. *Amicus* has presented this argument in another pending case, *see State v. Miles*, CR-16-0021-PC (oral argument Oct. 3, 2017), but that case, like *Mott*, includes an offense date predating the relevant statutory changes, and thus *Miles* will not present an opportunity to address that issue squarely, much less the *Richter-Jacobson* split. The constitutional right to present a defense demands rejection of *Jacobson*’s reasoning and result.

## ARGUMENTS

- I. **Evidence of a defendant’s PTSD is relevant and admissible. It does not merely recapitulate the defendant’s allegations of past abuse or vouch for the defendant’s own testimony.**

The Court of Appeals (“COA”) excluded Jacobson’s PTSD diagnosis on the basis that it “only served to vouch for Jacobson’s credibility.” *Opinion* ¶12. The

Court, finding that “[n]o Arizona case law discusses the admissibility of a diagnosis based solely upon a defendant’s statements,” *id.*, relied heavily on an Oregon case, *State v. Lupoli*, 234 P.3d 117 (Or. 2010).

As a preliminary matter, there is Arizona case law on point. In *State v. Delgado*, 232 Ariz. 182, 187 ¶12 (App. 2013), the court considered the admissibility of testimony from Dr. Salik, a strangulation expert, who had examined photographs of the victim’s neck and concluded that her injuries were “‘consistent with’ a person claiming they had been strangled.” Delgado argued that the testimony was simply a recapitulation of the victim’s testimony, which depended upon “believ[ing] D.H.’s account of the events in order to conclude she had been strangled.” *Id.* ¶16. The court disagreed, holding that whether Salik’s “patients have accurately reported the cause of their injuries goes to the weight of Salik’s testimony, not its admissibility.” *Id.* ¶15. “Medical professionals reasonably may be expected to rely on self-reported patient histories’ even though ‘it is certainly possible that self-reported histories may be inaccurate.” *Id.* (citations omitted). The proper remedy for the possibility that an expert’s diagnosis is incorrect because it relied on the defendant’s self-reported medical history is cross-examination, not preclusion. *Id.*

Several other Arizona cases have also permitted expert medical and psychological opinions based entirely or primarily on self-reported patient histories. In *State v. Christensen*, 129 Ariz. 32, 34 (1981), this Court held that the trial court

erred in precluding a psychiatrist who “would have testified that he had interviewed appellant and had reviewed tests which had been administered to him; that, in his expert opinion, appellant had difficulty dealing with stress and in stressful situations his actions were more reflexive than reflective.” Likewise, in *State v. Lete*, 237 Ariz. 516, 524 ¶16 (2015), this Court held that a psychological expert should have been allowed to testify as to the defendant’s “general character trait for impulsivity,” even though the expert had “only interviewed Lete after the murders.” Although the experts in those cases did not necessarily offer a “diagnosis,” the distinction between an expert opinion and a formal diagnosis was not the crux of the COA’s decision.

*Lupoli* is easily distinguishable. In *Lupoli*, the state presented expert diagnoses that the victims had been sexually abused. The Oregon Supreme Court reversed, finding such expert testimony to be impermissible vouching for the victims’ credibility. *Jacobson* ignored that the basis for the *Lupoli* decision was not that the diagnoses were made solely on the basis of the experts’ examinations of the victims, but that the diagnoses themselves were riddled with claims as to the credibility of the victims. One expert testified that a victim’s disclosures were “very clear and spontaneous,” “appropriate for [her] age,” “consistent,” “compelling,” contained details that would not exist “if you were making up a story,” and ultimately left her convinced that the victim was “telling it like it is.” 234 P.3d at 124. Another expert,

testifying about a different victim, described her statements as “developmentally appropriate,” “consistent,” and stated that the victim did not appear to be “suggestible.” *Id.* at 125-26. Furthermore, the very issue to be determined in *Lupoli* was whether the victims had been sexually abused, where an expert’s opinion was “nothing more than advice to jurors on how to decide the case.” *State v. Moran*, 151 Ariz. 378, 383 (1986).

This Court explained this distinction in *State v. Carlson*, 237 Ariz. 381 (2015), where the defendant sought to introduce testimony through an expert that the defendant falsely confessed to a television reporter. This Court recognized that expert opinions may be based on hearsay or other inadmissible evidence, but found that Dr. Haney would be a “mere conduit” for the defendant’s statement, thus rejecting Carlson’s novel argument that a jury can hear evidence of a defendant’s propensity to lie absent a formal diagnosis. *Id.* ¶¶26, 33-35.

Expert witness testimony that the defendant suffered from PTSD is quite different. It does not invade the province of the jury by telling them how to decide the case. A jury may believe that a defendant has PTSD, but find that his actions were not in self-defense, or vice versa. *State v. Janes*, 850 P.2d 495, 505 (Wash. 1993) (“[T]estimony that a defendant suffers from the battered child syndrome, standing alone, does not ensure that the defendant’s belief in imminent harm was reasonable.”).

Evidence that a defendant suffers from PTSD is highly relevant in evaluating justification defenses. A jury must evaluate a defendant's justification claim from the perspective of a "reasonable person in the defendant's situation." *State v. Vogel*, 207 Ariz. 280, 285 ¶28 & n.4 (App. 2004). Jacobson's situation is that of a battered woman with PTSD. The diagnosis of PTSD encompasses far more than the mere fact that the sufferer has previously experienced trauma. Not all traumatic experiences result in PTSD. One study found that 80% of women who had been raped experienced PTSD, but only 25% of persons exposed to other potential PTSD-inducing events developed the disorder. *State v. Hines*, 696 A.2d 780, 785 (N.J. App. Div. 1997) (citing Karl Kirkland, *Post-traumatic Stress Disorder v. Pseudo Post-traumatic Stress Disorder*, 56 Ala. Law. 90, 92-93 (1995)).

Therefore, to properly evaluate her claim of self-defense, it was vital that the jury know Jacobson developed PTSD, not just that she had suffered previous acts of domestic violence. As *Hines* held:

Two symptoms, hyper-vigilance and re-experiencing of prior trauma, are particularly relevant to claims of self-defense by a person afflicted with PTSD because these symptoms can affect a person's state of mind when confronted with a situation similar to the initial traumatic event.

696 A.2d at 786. Expert testimony on PTSD would allow a jury to understand that a victim of domestic violence with PTSD would be highly sensitized to subtle changes in the environment (and particularly the abuser) which suggest that danger is imminent. *See also Janes*, 850 P.2d 495 (allowing expert testimony as to battered

child syndrome, a form of PTSD, to support self-defense claim). As *Richter* correctly found, expert testimony about PTSD would “explain what was on [the defendant’s] mind as she committed the alleged offenses.” 243 Ariz. at 138 ¶21.

**II. The rule in *Mott* is inapplicable because evidence of the defendant’s PTSD does not serve to negate *mens rea* but rather to show the reasonableness of the defendant’s beliefs and relevant character-trait evidence.**

*Jacobson* wrongly held that the *Mott* rule precluded any evidence of PTSD. *Opinion* ¶¶18-20. However, *Mott* precludes expert psychological testimony only to support diminished capacity, not to demonstrate the reasonableness of a defendant’s actions when the defendant presents a justification defense. A justification defense, such as self-defense or duress, “does not operate by rebutting the *mens rea* element of a crime.” *State ex rel. Thomas v. Duncan*, 216 Ariz. 260, 264, ¶11 & n.4 (App. 2007). *See also State v. Carson*, \_\_\_ Ariz. \_\_\_, ¶11, 2018 WL 1056421 (2018) (“[O]nce sufficient self-defense evidence is admitted, the absence of self-defense becomes an additional element the state must prove to convict.”). Thus, when using such evidence to support a justification defense, *Mott* does not apply.

*Richter* correctly distinguished *Mott* in holding that the defendant must be allowed to present evidence of PTSD to support a duress defense. The defendant in *Richter* was charged with child abuse. She sought to call an expert witness who “would testify about her PTSD, ‘virtual captivity,’ and ‘constant state of fear, for

herself and her children.” 243 Ariz. at 138 ¶21. “Such testimony would explain what was on Sophia’s mind as she committed the alleged offenses.” *Id.* The evidence was not proffered to support a claim of diminished capacity. In fact, the defendant “acknowledged that she had to admit she acted intentionally or knowingly as part of her duress defense.” *Id.* at 137 ¶18; *but see Carson*, 2018 WL 1056421 (defendant may run justification and mistaken identity defenses concurrently so long as evidence supports both). Rather, the evidence supported the defendant’s claim that her actions were taken under duress.

Courts in other jurisdictions have also recognized and applied this distinction. Florida, like Arizona, does not recognize a defense of diminished capacity. *Chestnut v. State*, 538 So.2d 820, 825 (Fla. 1989). Nevertheless, in *State v. Mizell*, 773 So.2d 618 (Fla. App. 2000), the court allowed testimony about the defendant’s PTSD in support of his self-defense claim. The court held that PTSD evidence was not diminished capacity evidence, but rather state-of-mind evidence, which was relevant “to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of [the defendant’s] belief.” *Id.* at 621 (citations omitted).

Ohio also forbids diminished capacity defenses. *State v. Wilcox*, 436 N.E.2d 523, 533 (Ohio 1982). But in *State v. Daws*, 662 N.E.2d 805, 817 (Ohio App. 1994), the court allowed expert testimony on battered woman syndrome (BWS), a form of PTSD, in a self-defense case, because the testimony was not offered “to show that

the accused lacked the *mens rea* to commit the crime,” but rather “to establish that the accused’s actions were justified despite the fact that she possessed the requisite mental state.”

Furthermore, a defendant’s PTSD is permissible “observation evidence,” which *Mott* does not preclude. “Observation evidence” includes testimony from an expert witness “about [the defendant’s] tendency to think in a certain way and his behavioral characteristics.” *Richter*, 243 Ariz. at 131 ¶20 (citations omitted). Such evidence “bears on a defendant’s state of mind at the time a crime was committed,” as opposed to professional mental-disease or capacity evidence, which bears on the defendant’s “ability to form a certain state of mind.” *State v. Wright*, 214 Ariz. 540, 545 ¶17 (App. 2007) (citations omitted). Even expert opinions on a defendant’s “ability to premeditate” are permissible as long as they focus on “the defendant’s general personality trait rather than his probable mental state at the time of the offense.” *State v. Ortiz*, 158 Ariz. 528, 533 (1988). Jacobson should have been allowed to introduce expert testimony to assist the jury in understanding her situation so that they could properly assess the reasonableness of her actions by understanding her state of mind when she shot her boyfriend.

**III. Even if PTSD evidence serves to negate *mens rea*, the rule in *Mott* has been overturned by statute. The offense in *Mott* pre-dated significant legislative changes which allow evidence of diminished capacity to be used to negate *mens rea*.**

“Diminished capacity,” as it is used in *Mott*, refers to a mind that is weakened, such as by emotional abuse. *Mott* claimed that she could not form the requisite mental state to commit the charged offenses because she suffered from BWS and her “history of being abused, in conjunction with her limited intelligence, prohibited her from being able to decide to take Sheena to the hospital.” 187 Ariz. at 539-40. This Court held that such evidence constituted diminished capacity, which was specifically precluded under *State v. Schantz*, 98 Ariz. 200 (1965). When this Court wrote in *Mott* that “Arizona does not allow evidence of a defendant’s mental disorder short of insanity either as an affirmative defense or to negate the *mens rea* element of a crime,” 187 Ariz. at 541, it expressly quoted and interpreted the earlier version of §13-502 in effect at the time of *Mott*’s offense. But the statute now states that “mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or impulse control disorders.” Defenses such as diminished capacity and voluntary intoxication, whether allowed or disallowed by law, are properly characterized as affirmative defenses for excusing a defendant’s acting with a culpable mental state, rather than a negation of the culpable mental state. This much

is made explicit in §13-502, which states that “a mental disease or defect constituting legal insanity is an affirmative defense.”

Although *Mott* is couched in language of “negating *mens rea*,” that is not really an accurate characterization of BWS. Mott knew her child needed medical assistance and was very aware that she was failing to perform a duty. A paramedic told her the baby needed to go to the hospital, and she explained in a police interview that she knew the baby needed to go to the hospital earlier. 187 Ariz. at 538-39. Thus, in the manner that it was presented in *Mott*, BWS is clearly an affirmative defense. The BWS expert proffered by Mott would have testified “that defendant was unable to form the requisite intent to have acted knowingly or intentionally.” *Id.* at 539. While it is extremely unlikely that Mott acted intentionally, it is inconceivable how, under these facts, she was incapable of acting knowingly, which requires only that, “with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.” A.R.S. §13-105(10)(b). Regardless of the fact that *Mott* is replete with references to “negating *mens rea*,” the crux of the BWS defense is an admission that the defendant formed the culpable mental state for the offense while seeking to excuse that conduct. This Court seemed to recognize as much in *Leteve*, 237 Ariz. at 524 ¶20: “The legislature has not

provided for, and this Court has refused to allow, an affirmative defense of diminished capacity.”

*Mott* has been discussed for two decades as if the current versions of statutes existed at the time of Mott’s offense in 1991. This ignores two important changes. At the time *Mott* was decided, this Court was interpreting its own prohibition on use of diminished capacity or other such evidence to negate *mens rea* as stated in *Schantz*. But in the time between Mott’s 1991 offense and this Court reviewing her case, the legislature repealed the existing §§13-502 & 13-503 and replaced them with entirely new statutes. Laws 1993, Ch. 256, §§2-3. The statute no longer prohibits evidence negating a culpable mental state; the prohibition explicitly extends to the affirmative defense of insanity, and no farther.

*Mott* is based almost entirely on *Schantz*; its limited citation to the statute was to the old version. Yet successive cases that cite to *Mott* have failed to note the legislative changes, and instead assume that *Mott*’s language appears in the statute and that Mott’s offense postdated the 1993 change. *See State v. Johnson*, 229 Ariz. 475, 480 ¶14 (App. 2012) (“Subsection (A) of §13–502 was passed in its current form in 1993, before *Mott*, and has not been amended since. Thus, we can presume the legislature has approved the supreme court’s interpretation of the statute as precluding diminished capacity evidence to defend against the *mens rea* element of an offense.”) (citations omitted).

The second change relates to what constitutes an “affirmative defense.” After *Mott* was decided, the definition of “affirmative defense” was added to A.R.S. §13-103(B) by Laws 1997, Ch.136, §3. Now, “affirmative defense” is defined as: “a defense that is offered and that attempts to excuse the criminal actions of the accused ... Affirmative defense does not include ... any defense that either denies an element of the offense charged or denies responsibility, including alibi, misidentification or lack of intent.” *Id.*<sup>1</sup> This Court has recently explained this difference and held that the defense of lack of sexual motivation in A.R.S. §13-1407(E) does not deny the culpable mental state of knowingly in the molestation or sexual abuse statutes, and thus it is not an “element-negating defense under §13-103(B).” *State v. Holle*, 240 Ariz. 300, 305 ¶24 (2016). Although the issue in *Holle* was different, its rationale on this point applies equally to §13-502, which in no way refers to negating *mens rea*. This distinction was recognized in *Carson*, 2018 WL 1056421, ¶11.

If the legislature modifies a statute, this Court’s interpretations must conform to those modifications. Arizona courts have consistently failed to acknowledge that *Mott* interpreted an earlier version of the laws, and instead have adhered to *Mott*. A similar error has recently been discovered—and fixed. *State v. King*, 222 Ariz. 636

---

<sup>1</sup> In 2006, the Legislature modified §§13-103(B) and 13-205(A) to remove justification defenses from the category of “affirmative defenses” so that such defenses must now be disproved by the prosecution.

(App. 2009), *vacated*, 225 Ariz. 87 (2010) (recognizing legislature removed “sole motivation requirement” for self-defense in 1977).

By precluding affirmative defenses of diminished capacity and voluntary intoxication from the guilt phase, the legislature and the courts have struck an appropriate balance that ensures that criminal defendants are held accountable for the appropriate culpable mental state. *State v. Lua*, 237 Ariz. 301, 305 ¶13 (2015) (recognizing “the societal interest in avoiding the unjustified exoneration of wrongdoers and in punishing a defendant only to the extent of his crime.”) (citations omitted).

## CONCLUSION

For these reasons, *amicus* requests that this Court hold that *Mott* applies only to affirmative defenses, because any other result would violate statutory plain language and the due process clause.

RESPECTFULLY SUBMITTED this 16th day of March, 2018.

By /s/ David J. Euchner

David J. Euchner and Nathan S. Benedict  
Attorneys for *amicus curiae*