Case No. S271809

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re ABIGAIL G.,
A Person Coming Under the Juvenile Court Law.

MICHAEL G.,
Petitioner and Appellant,

v.

SUPERIOR COURT OF ORANGE COUNTY,
Respondent;

ORANGE COUNTY SOCIAL SERVICES AGENCY, *et al.*,
Real Parties in Interest.

Court of Appeal, Fourth District, Division Three, Case No. G060407
(*Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1113)
Denying a Petition for Extraordinary Writ Relief to the Superior Court of Orange County, Case No. 19DP1381 (Hon. Antony C. Ufland, Judge)

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to California Rules of Court, rule 8.520(f), the California State Association of Counties ("CSAC") respectfully requests permission to file the attached amicus curiae brief as a friend of the Court in support of Real Party In Interest the Orange County Social Services Agency ("OCSSA").

The California State Association of Counties is a non-profit corporation whose members consist of the 58 California counties. CSAC sponsors a Litigation Coordination Program administered by the County Counsels' Association of California and overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case directly impacts all counties of this State.[1]

I. STATEMENT OF INTEREST

Determining whether juvenile courts are required to extend reunification efforts beyond the 18-month review when families have been denied adequate reunification services in the preceding review period concerns counties statewide, as any decision would impact the length of the dependency proceedings and timing for the establishment of a child's permanent plan. The governing statute of the 18-month review hearing is clear. The juvenile court need not find that the family had been provided adequate reunification services in order to terminate those services and set a

[1] No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

selection and implementation hearing pursuant to Welfare and Institutions Code section 366.26.

Dependency proceedings are unique proceedings in which the counties, through their social workers, are charged by the Legislature to investigate allegations of child abuse or neglect, to remove children from unsafe homes and find safe homes for these children, and to provide family reunification services, or permanent plans when appropriate. The provision of reunification services is to implement 'the law's strong preference for maintaining the family relationships if at all possible.' [Citation.]" (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) However, reunification services are typically understood as a benefit provided to parents, and not a constitutional entitlement. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.) Accordingly, due process is not implicated by not requiring that a court extend reunification services at the 18-month review if adequate services have not been provided to the family in the preceding period. Moreover, because Welfare and Institutions Code section 352 permits the juvenile court to continue services after an individualized assessment, a parent's due process rights are protected.

"The overarching goal of dependency proceedings is to safeguard the welfare of California's children." (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.) Dependency proceedings are focused on the child and what is in that child's best interest. "The best interest of the child is the fundamental goal of the juvenile dependency system, underlying the three primary goals of child safety, family preservation, and timely permanency and stability. The concept of a child's best interest is an elusive guideline that belies rigid definition. Its purpose is to maximize a child's opportunity to develop into a stable, well-adjusted adult." (*In re William B.* (2008) 163 Cal.App.4th

1220, 1227 (citations and quotations omitted).) The Legislature has balanced the competing goals of allowing sufficient time for reunification with obtaining timely permanency and stability for abused and neglected youth. It has done so by allowing for a juvenile court to set a selection and implementation hearing at the 18-month review, even if adequate services were not provided in the preceding period. Ensuring that dependent youth obtain a permanent plan without delay and preventing foster care limbo is a matter of statewide concern.

II. CONCLUSION

Amicus Curiae believes the proposed brief submitted with this application will aid the Court in deciding the important questions it faces in this case. For these reasons, CSAC requests leave to file the proposed amicus curiae brief.

Dated: June 10, 2022 /s/ *Samantha N. Stonework-Hand*

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Attorney for Amicus Curiae

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AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF REAL PARTY IN INTEREST ORANGE COUNTY SOCIAL SERVICES AGENCY

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AMICUS CURIAE BRIEF

I. INTRODUCTION

This case presents the following issue: Are juvenile courts required to extend reunification efforts beyond the 18-month review when families have been denied adequate reunification services in the preceding review period? After considering the plain language of Welfare and Institutions Code[2] section 366.22, the simple answer is no. The legislative history and half a century of social science about the detrimental effects of prolonged foster care on abused and neglected dependent youth support the Legislature's decision to not require an extension of services at the 18-month hearing.

Petitioner does not dispute that the governing statute is clear. Rather, Petitioner's argument goes to what he believes the statute "should" say; not what it does. Petitioner acknowledges that the statutory provisions that govern the six- and 12-month review hearings expressly condition the setting of the section 366.26 hearing on a finding of reasonable services. (Sections 366.21(e)(3) and (g)(l)(C)(ii).) In contrast, the statute applicable at the 18-month review eliminated the reasonable services requirement for all but a narrowly defined subset of parents or guardians. As described in the Orange County Social Services Agency's Answer Brief ("Answer Brief"), as a dependency case progresses, the juvenile court's focus slowly shifts from assisting reunification to finding permanency and stability for dependent youth. Between disposition and the 12-month review, the primary focus of the statutory scheme is to reunify families if possible.

[2] Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

Hence the necessity that social services agencies provide reasonable and adequate services to the family to assist in that reunification. If reasonable services are not provided, an extension of services is required. However, at the 18-month review, the Legislature made an intentional decision to realign the focus from reunification and limit the extension of services only in defined circumstances. (*See* Sections 366.22(a) and 361.5(a)(4)(A).)

There is a clear rule. In most cases, a parent may only receive up to 18 months of reunification services. The statutory scheme provides exceptions to this rule. Those exceptions are encapsulated in Sections 366.22(b) and 352. Put another way, there is no *requirement* to extend services beyond the 18-month review when families have been denied adequate reunification services in the preceding review period. However, there are extraordinary circumstances that may warrant such an extension of services. Some of those extraordinary circumstances are codified; others are left to the sound discretion of the juvenile court.

Many have wondered why the Legislature omitted the requirement that adequate services be provided in order to terminate services at an 18-month review hearing, however, a study of the purpose of the dependency scheme reveals that it is most certainly intentional. The Legislature did not pick the 18-month timeframe in a vacuum. There is a wealth of evidence that children who remain in foster care for prolonged periods, particularly after 18 months, suffer poor outcomes in almost every facet of their lives. While determining when in a dependency proceeding the focus must shift away from reunification and continued foster care toward a focus on a plan for stability and permanence is a difficult decision, it is one that must be made by the Legislature. This Court must affirm that a juvenile court is not required to extend reunification efforts beyond the 18-month review when

families have been denied adequate reunification services in the preceding review period.

II. THE DECISION TO NOT REQUIRE AN ADEQUATE SERVICES FINDING AT THE 18-MONTH REVIEW IS BASED ON PREVENTING FOSTER CARE LIMBO

The legislative history of Section 366.22 shows that the Legislature made a clear determination that in most cases, a parent does not receive an extension of services regardless of an adequate services finding at the 18-month hearing. Only those parents that are described by Section 366.22, subdivision (b) may have services extended until a 24-month review based solely on such a finding. (*See* Answer Brief 42-45.)

As both parties have noted, the Honorable Justice Goodwin Liu previously commented that "it is unclear why the Legislature would have chosen to provide such a protection only to this subset of parents or guardians." (*J.C. v. Superior Court* (Aug. 23, 2017, S243357) Statement Respecting Denial of Review By Liu, J. [2017 Cal. Lexis 6576, at p. *8].) CSAC submits that the reason to limit such protection is that continuing services and maintaining a minor in foster care for longer than 18 months correlates with a phenomenon known as "foster care drift" or "limbo", to the detriment of dependent youth. Therefore, only a small subset of parents or guardians, who due to extraordinary circumstances may have additional barriers to reunification, should have their services continue past the 18-month review period.

Over half a century of social science has taught that children who remain in foster care for a prolonged period face a myriad of issues. This Court must keep in mind that there was a history of children languishing in foster care for years, and there has been significant work over several

decades at both the state and federal level to ensure that children obtain stability and permanence in a timely fashion. In 1959, a landmark study was published which illuminated the plight of children who drifted aimlessly in foster care without a plan for permanency. (Maas HS, Engler, Jr., R.E. *Children in need of parents.*, New York: Columbia University Press; 1959.) Based on the results of this study, the authors inferred that "staying in care beyond *a year and a half* greatly increases a child's chances of growing up in care." (*Id.*, emphasis added.) This 18-month timeframe was used in congressional testimony and repeatedly cited to justify timely interventions on behalf of foster youth and was later codified in 1980 when Congress enacted the Adoption Assistance and Child Welfare Act ("1980 Act") (Pub.L. 96-272). At the time, the 1980 Act was applauded by child advocates across the country as a major step in reforming the child welfare systems. (Shotton, Alice, *Making reasonable efforts in child abuse and neglect cases: ten years later. (Children, Family and the Law)*, 26 Cal. W. L. Rev. 223, 223 (1990).) Before passing the 1980 Act, Congress heard testimony over a five-year period. One of the most striking facts was the astonishing number of children who were being removed from their families and placed in foster care for the entire duration of their childhoods. (*Id.* at 224.)

The next significant federal change occurred in 1997, when the 1980 Act was amended by the Adoption and Safe Families Act ("ASFA"). (42 U.S.C. §§ 603, 622, 629, 671, 675 (1997).) One of the many changes brought about by ASFA were time limits designed to move children more swiftly out of foster care "legal limbo." (Celeste Pagano, Adoption and Foster Care (1999) 36 Harv. J. on Legis. 242, 246.) "Limiting the time from when a child enters foster care to the beginning of proceedings to

terminate a parent's rights involves a difficult balance between a child's right to be free from danger and his or her right to a loving and stable family." (*Id.*) One congressperson described such balancing as "a central dilemma in the field of child protection." (*Id.*)

"Responding to evidence that children were languishing in foster care, [ASFA] marked a turning point in child welfare policy, making permanency and adoption as important a priority for children in foster care as the traditional mission of ensuring safety and security for these children. However, despite this renewed focus on permanency and the resulting increase in adoptions since 1997, nearly half of children continue to reside in foster care for more than 18 months, and many, for years." (David M. Rubin, MD, Amanda O'Reilly, MPH, Xianqun Luan, MS, and A. Russell Localio, Pediatrics. 2007 Feb; 119(2): 336-344, *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2693406/ (last visited June 1, 2022.)

In 2020, even decades after the wave of reforms, minors under California juvenile court jurisdiction averaged a 25-month stay in foster care, higher than the nationwide average. A full nine percent of children in foster care in California have spent five or more years in foster care, compared to six percent nationally. (Child Trends, https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states (last visited May 31, 2022.) "Longer periods of time in foster care are associated with greater risk for remaining in foster care instead of achieving permanency." (Ringeisen, Tueller, Testa, Dolan, & Smith, *Risk of long-term foster care placement among children involved with the child welfare system*, (2013),

https://www.acf.hhs.gov/sites/default/files/documents/opre/nscaw_ltfc_research_brief_19_revised_for_acf_9_12_13_edit_clean.pdf, last visited June 7, 2022.) As noted by these studies, extending reunification services and prolonging foster care for more than 18 months can result in poor outcomes for foster youth.

Moreover, the longer one spends in foster care, the more likely it is that the minor will experience placement changes. "Children who are in foster care for 24 months or longer, 15% experienced 5 or more placements and 44% experienced 3 or more placements." (Children's Law Center of California, *Foster Care Facts*, https://www.clccal.org/resources/foster-care-facts/, last visited May 31, 2022.) In turn, frequent placement changes have shown to result in higher likelihood of contact with the juvenile justice system. (Krinsky, *Disrupting the Pathway from Foster Care to the Justice System – A Former Prosecutor's Perspectives on Reform* (2010) 48 Fam. Ct. Rev. 322, 325.)

Then, there are the mental health and housing insecurity issues correlated with prolonged foster care. "Compared with other Medicaid-eligible youth, youth placed in foster care have 5 to 8 times the rate of mental health service use, 8 to 12 times greater mental health expenditures, and 2 to 8 times the rates of various psychotropic prescribing practices (e.g., any psychotropic medication, antipsychotic medication, and polypharmacy)." (Lee, Fouras & Brown, *Practice Parameter for the Assessment and Treatment of Youth Involved with the Child Welfare System*, American Academy of Child and Adolescent Psychiatry (2012) https://www.jaacap.org/article/S0890-8567(15)00148-3/fulltext, last visited June 8, 2022.) "A 2018 report from Los Angeles's Coordinated Entry System Manager indicates that on a given night in Los Angeles, over 3,000

young adults experience homelessness, and 31% of these young people report previous or current involvement in the child welfare system." (Lehman, *Youth Homelessness in Los Angeles County: Innovation With Child Welfare, Juvenile Justice and Coordinated Entry Systems* (October 8, 2018).)

The experts at Harvard University's National Scientific Council on the Developing Child have noted:

> The child welfare system is typically characterized by cumbersome and protracted decisionmaking processes that leave young children vulnerable to the adverse impacts of significant stress during sensitive periods of early brain development. The powerful and far-reaching effects of severely adverse environments and experiences on brain development make it crystal clear that time is not on the side of an abused or neglected child whose physical and emotional custody remains unresolved in a slow-moving bureaucratic process. The basic principles of neuroscience indicate the need for a far greater sense of urgency regarding the prompt resolution of such decisions as when to remove a child from the home, when and where to place a child in foster care, when to terminate parental rights, and when to move towards a permanent placement. The window of opportunity for remediation in a child's developing brain architecture is time-sensitive and time-limited.

(National Scientific Council on the Developing Child (2007). *The Timing and Quality of Early Experiences Combine to Shape Brain Architecture: Working Paper No. 5.*, https://developingchild.harvard.edu/, last visited June 1, 2022.)

Given that longer stays in foster care for dependent youth are correlated with significant poor outcomes, it makes sense that the Legislature's focus was to only extend reunification services past 18 months in extraordinary circumstances, or for a subset of parents or guardians. In 2009, when the Legislature restored the reasonable services requirement for the cases falling under Section 366.22 subdivision (b), legislative history focused on the idea that services beyond 12 months need to be provided to parents who are incarcerated – not parents in a general sense. A Senate Human Services Committee Bill Analysis noted that AB 2070, which restored the reasonable services requirement, "is designed to give incarcerated parents more time to find and use services that will assist them to retain custody of their children." (California Bill Analysis, Senate Human Services Committee, 2007-2008 Regular Session, Assembly Bill 2070.) The same bill analysis suggests that AB 2070 was passed in response to ASFA, "one of several major pieces of legislation written in response to concerns that children were staying too long in foster care." (*Id.*) As noted in the Answer Brief, that subset of parents has been expanded to include minor or nonminor parents, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security. (Section 366.22(b).) For all other parents that that did not have one of these defined barriers to reunification, the Legislature has determined that the extension of services would, in most cases, not be in the best interests of the involved minors. Although it may seem that allowing for an additional six months of services would not impact the minor, "[w]hile six months may not be an impressive period to aged judges, it is an eternity to very young children." (*In re Candace P.* (1994) 24 Cal.App.4th 1128, 1130 n.3.) Obviously,

determining when to shift the dependency scheme's focus away from reunification and towards another permanent plan is a difficult decision, but decades of research show that a line must be drawn at 18 months.

III. JUVENILE COURTS ARE NOT REQUIRED TO EXTEND REUNIFICATION EFFORTS BEYOND THE 18-MONTH REVIEW WHEN FAMILIES HAVE BEEN DENIED ADEQUATE REUNIFICATION SERVICES IN THE PRECEDING REVIEW PERIOD

The 18-month status review hearing is governed by Section 366.22. The governing statute does not make a finding of reasonable services a precondition for terminating reunification services and setting a selection and implementation hearing pursuant to Section 366.26. Section 366.22 is not ambiguous; there is no tension. Because of the prospect of foster care limbo, the Legislature has made the judgment call that in most cases, reunification services may only be provided until the 18-month review. Only in exceptional circumstances, either those circumstances as codified under Section 366.22, subdivision (b), or pursuant to the sound discretion of the juvenile court pursuant to Section 352, subdivision (a), may services be continued.

When a child is under the age of three years when removed from parental custody, reunification services are generally limited to six months. (Section 361.5(a)(1)(B).) Thereafter, the court may extend services for an additional six months (until a 12-month status review), and again for another additional six months (until an 18-month permanency review). (Sections 366.21(e)(3), (g)(1).) For those children over the age of three years when removed from parental custody, reunification services are generally limited to 12 months and may be extended an additional six months. (Sections 361.5(a)(1)(A); 366.21(g)(1).) The 18-month

permanency review in this case is governed by subdivision (a) of section 366.22. Subdivision (a)(1) provides that the court must return the dependent child to the physical custody of a parent "unless the court finds, by a preponderance of the evidence, that the return of the child . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (*Id.*) Subdivision (a)(3) provides that if the court cannot return a child to a parent, "the court ***shall*** order that a hearing be held pursuant to section 366.26 to determine whether adoption, …guardianship, or continued placement in foster care is the most appropriate plan for the child…. The hearing shall be held no later than 120 days from the date of the permanency review hearing…. The court ***shall*** also order termination of reunification services to the parent…. The court shall determine whether reasonable services have been offered or provided to the parent…" (*Id.*, emphasis added.)

In this case, the Fourth District Court of Appeal correctly held that pursuant to the current language in Section 366.22, subdivision (a)(3), the juvenile court has the authority to terminate reunification services and set the Section 366.26 hearing at the 18-month review hearing, "notwithstanding a conclusion that reasonable services were not provided in the most recent review period." (*Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, 1144 (*Michael G.*), *review granted* January 19, 2022, S271809.) Other appellate courts have concluded the same. (*See e.g.*, *N.M. v. Superior Court* (2016) 5 Cal.App.5th 796, 806; *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1504 (*Earl L.*); *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1511, superseded by statute on another ground as stated in *Earl L., supra*, at p. 1504; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1015, 1017, superseded by statute on another

ground as stated *in Earl L., supra*, at p. 1504.) Courts have recognized that "denying or terminating reunification services can be heart wrenching. But 'in order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate.' [Citation.] The statutory restrictions are consistent with the overall objective of the statutory scheme – that is, the protection of abused or neglected children and the provision of permanent, stable homes if they cannot be returned to parental custody within a reasonable time." (*San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 225 (*San Joaquin*).)

Petitioner makes much of a statement supporting the California Supreme Court's denial of review in *J.C. v. Superior Court*, where Justice Goodwin Liu noted the "statutory scheme is ambiguous" and ripe for review by the Legislature. (*J.C. v. Superior Court* (Aug. 23, 2017, S243357) Statement Respecting Denial of Review By Liu, J. [2017 Cal. Lexis 6576, at p. *8.) The Legislature is presumed to be aware of Justice Liu's statement. (*See People v. Giordano* (2007) 42 Cal.4th 644, 659.) And despite this presumed awareness, the Legislature has failed to amend Section 366.22 to *require* a finding of reasonable or adequate services as a precondition for setting a selection and implementation hearing pursuant to Section 366.26. Moreover, it is not as if the Legislature has ignored this statute since Justice Liu's statement. In fact, there is pending legislation to amend Section 366.22 and the proposed changes do not incorporate a change that a reasonable services finding is a precondition for setting a selection and implementation hearing pursuant to Section 366.26.[3] (2021

[3] Instead, the current pending legislation would amend both Section 366.21 and 366.22 to require a finding that reasonable services were provided by

California Assembly Bill No. 2866, California 2021-2022 Regular Session.) Justice Liu directed his statement at the Legislature, and they have made a clear decision not to act.

CSAC submits that at the 18-month review the provisions requiring that reasonable reunification services must be provided before a juvenile court orders a section 366.26 hearing only apply in extraordinary circumstances. Either the parent or guardian belongs to the small subset that the Legislature has determined has additional barriers to reunification worthy of continuing services if adequate services are not provided in the preceding period pursuant to Section 366.22, subdivision (b), or the juvenile court makes a determination in its sound discretion pursuant to Section 352, subdivision (a) that there is good cause and in the best interest of the minor to continue services.

Section 352, subdivision (a)(1), allows a juvenile court to "continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that a continuance shall not be granted that is contrary to the interest of the minor. In considering the minor's interest, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (Section 352(a).) In considering a request for a continuance "the juvenile court should consider: the failure to offer or provide reasonable reunification services; the likelihood of success of further reunification services; whether [the minor's] need for a prompt

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clear and convincing evidence rather than by the lesser standard of the preponderance of the evidence. (2021 California Assembly Bill No. 2866, California 2021-2022 Regular Session.)

resolution of . . . dependency status outweighs any benefit from further reunification services; and any other relevant factors the parties may bring to the court's attention." (*In re J.E.* (2016) 3 Cal.App.5th 557, 563.)

As *Mark N.* held, "the answer to the present dilemma is found in section 352," which authorizes a juvenile court to continue an 18-month permanency review to allow for additional reunification services for the "preservation of the family when appropriate." (*Mark N., supra*, 60 Cal.App.4th at p. 1016); *see also In re J.E., supra,* 3 Cal.App.5th at pp. 563-64 [holding that despite the Legislature's mandate that at the 18-month permanency hearing the juvenile court was to either return the child to the physical custody of the parent or "'terminate reunification services and set a [section 366.26] hearing,'" it was, however, "within the court's discretion under section 352" to continue an 18-month permanency hearing and extend reunification services]; *Denny H., supra*, 131 Cal.App.4th at p. 1510, *Elizabeth R., supra,* 35 Cal.App.4th at pp. 1792, 1796.)

Section 352 is the appropriate statutory safety valve if a family is denied adequate reunification services in the 12-18-month review period because it requires that the juvenile court consider the totality of circumstances. The factors a court must consider include the likelihood of success of continued services *and* whether a continuance, and the accompanying continued reunification services, would promote *that child's* best interests. (Section 352 (a); *In re M.P.* (2020) 52 Cal.App.5th 1013, 1021-22.) In determining whether it would be in that particular child's best interest to continue services, the juvenile court must grapple with a decision to delay permanency for that minor which may result in the minor languishing in foster care for an extended time period. As discussed, *supra*,

the ramifications of such a delay may affect the minor's mental health, educational outcomes, and housing stability.

The underlying facts of this case demonstrate why an analysis pursuant to Section 352 is appropriate at the 18-month review if the court finds that adequate services were not provided in the preceding review period. At the time of the 18-month review hearing, the minor, A.G. was 16 years old. (*Michael G.*, *supra,* 69 Cal.App.5th at p. 1138.) She had been removed from Father's care due to his mental health issues. The juvenile court found that neither parent had consistent and regular contact with the minor, and Father repeatedly made clear that he was unwilling to meaningfully engage in any type of mental health services. (Petitioner's Opening Brief at 10-15, 38.) The minor was also placed with her older sibling in a stable placement, with caregivers who were willing to provide permanence through legal guardianship. (*See* Opening Brief at 35; Answer Brief at 28.) While the court found that the Agency had not provided reasonable services in the preceding period, the juvenile court was also in the best position to make the assessment that continued services would not likely result in reunification, nor were they in the best interest of the minor. Ultimately, the juvenile court concluded that it was not in A.G.'s best interest for reunification services to continue. (*Michael G.*, *supra,* 69 Cal.App.5th at p. 1138.) This is exactly the type of individualized assessment that must be made if a court were to extend services past the 18-month review period. Moreover, because the court may extend services pursuant to Section 352, based on an individualized assessment of the parent's engagement with services, the likelihood of reunification, and the child's particular needs, among other factors, the parent's due process rights are protected. (*See In re C.P.* (2020) 47 Cal.App.5th 17, 29, review

denied (July 22, 2020) ["Due process principles require, at the least, an individualized, case-by-case analysis," with regards to a categorical bar of placement of a minor with a parental bond.].)

IV. SOCIAL SERVICES AGENCIES HAVE A STRONG INCENTIVE TO PROVIDE REASONABLE SERVICES

Petitioner asserts that without requiring a reasonable services finding at the 18-month review to terminate services, social services agencies have no incentive to provide those services. (Opening Brief at 57.) As explained in the Answer Brief, even without such a requirement, social services agencies have a strong incentive to provide reasonable services – money. Under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria.

As discussed *supra*, in 1980, Congress enacted the 1980 Act which created the Title IV-E program. The 1980 Act mandated that "reasonable efforts" be made "to prevent or eliminate the need for removal of the child from his home" and "to make it possible for the child to return to his home." (Celeste Pagano, *Adoption and Foster Care* (1999) 36 Harv. J. on Legis. 242, 243.) The 1980 Act seemed to require that states provide some services to the family, in keeping with the federal government's expansion of the definition of "child welfare services" to include family preservation and reunification services. (*Id.*) The 1980 Act left up to each state what constituted "reasonable efforts." Because the system was implemented differently in each state, the United States Supreme Court noted that reasonable efforts would "obviously vary with the circumstances of each

individual case," as the phrase leaves "a great deal of discretion" in implementation to the States. (*Suter v. Artist M.*, (1992) 503 U.S. 347, 360 [holding that the "reasonable efforts" directive was too vague to create a right enforceable under 42 U.S.C. § 1983].)

In 1997, the Title IV-E program was amended by the ASFA. (42 U.S.C. §§ 603, 622, 629, 671, 675 (1997).) "Title IV-E plan requirements that largely address the child welfare goals of safety, permanence, and well-being of children. Safety refers to ensuring that children served are protected from further abuse or neglect. Permanence refers to the goal of ensuring that children do not spend too many of their formative years in foster care. Accordingly, if a child enters foster care, the state must work to quickly and safely reunite a child with his or her parents, or, if that is not possible or appropriate, to quickly find another safe and permanent home for the child." (Congressional Research Services, *Report R42794*, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus, updated November 2014, at p. 1 https://crsreports.congress.gov/product/pdf/R/R42794/10, last visited May 25, 2022.) With limited exceptions, the Title IV-E program requires states to make "reasonable efforts" to prevent the need for a child's removal from his or her home and, if a child does enter care, to make it possible for him or her to safely return home. (42 U.S.C. 671(a)(15)(A), (B).) Each child in care must have a written case plan that addresses services to be provided to the parents, child, and foster parents that will improve conditions in the parents' home, facilitate the return of the child to his or her own safe home (or other permanent placement of the child), and address the needs of the

child while in foster care. (42 U.S.C. 671(a)(16) and 42 U.S.C. 675(1)(A) and (B).)

The importance of providing reasonable services throughout the dependency case is nowhere more emphasized than in California. California was an early adopter of mandating that social services agencies provide "reasonable efforts" at every stage of the dependency proceeding. (Shotton, Alice, *Making reasonable efforts in child abuse and neglect cases: ten years later*. (Children, Family and the Law), 26 Cal. W. L. Rev. 223, 226 (1990).) "California's . . . statutes recognize the importance of the agency making reasonable efforts throughout the time a child is in placement, acknowledging that such vigilance is necessary to prevent the foster care limbo Congress was so concerned about." (*Id.* at 227.) Considering that California was at the forefront of statutorily mandating that families receive adequate reunification services, it makes the Legislature's clear failure to include it as a requirement at the 18-month review hearing all the more striking.

Moreover, obtaining Title IV-E funding by providing reasonable services is crucial for each social services agency. For a child to be eligible for the Title IV-E federal funds, Section 472(a)(2)(A)(ii) of the Act requires a judicial determination that the Title IV-E Agency made the reasonable efforts as described in Section 471(a)(15) of the Act. (42 U.S.C. § 672(a)(1)(A), (a)(1)(A)(ii); 45 CFR 1356.21(b), (d).) For example, in Fiscal Year 2011, states (including the 50 states and the District of Columbia) spent $12.4 billion under the Title IV-E program and received federal reimbursement of $6.7 billion, or 54% of that spending. (Congressional Research Service, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and*

Kinship Guardianship Assistance under Title IV-E of the Social Security Act, (2012), https://www.courts.ca.gov/documents/BTB_23_3C_8.pdf, last visited May 25, 2022.) "More than two-thirds of all Title IV-E spending supports provision of foster care . . . Title IV-E program administration primarily supports caseworker and agency efforts to ensure the safety and well-being of each child in foster care and to plan for, and achieve, permanency for them via family reunification, adoption, or legal guardianship. Just 29% of the $8.3 billion in total (state and federal) Title IV-E foster care spending for FY2011 was used for maintenance payments, while close to half (46%) of those Title IV-E foster care dollars supported program administration (primarily for case planning and case management)." (*Id.* at p. 1.) "For FY2013, states spent $12.3 billion under the Title IV-E program and expected to receive federal reimbursement of $6.7 billion, or 54% of that spending." (Congressional Research Services, Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus, updated November 2014, https://crsreports.congress.gov/product/pdf/R/R42794/10, last visited May 25, 2022.)

More recently, in Fiscal Year 2018, it was reported that California received over $2.7 billion dollars in federal funds, of which, two billion was Title IV-E funds. (Kristina Rosinsky, Sarah Catherine Williams, Megan Fischer, and Maggie Haas, *Child Welfare Financing SFY 2018: A survey of federal, state, and local expenditures* (2021) https://www.childtrends.org/wp-content/uploads/2021/03/ChildWelfareFinancingReport_ChildTrends_March2021.pdf , last visited June 1, 2022.) Meanwhile, state and local expenditures totaled

approximately $2.1 billion dollars, less than 50% of the total expenditures in California. (*Id.*)

The statutory scheme in California envisions a robust provision of services to families to assist in reunification. Over half of California's funding for those services is dependent on providing those services. Taken together, California social services agencies have a strong incentive to provide adequate services to families in the dependency system even without requiring such a finding at an 18-month review prior to determining a permanent plan.

V. CONCLUSION

There is no statutory requirement to extend services at the 18-month review, even if a family did not receive adequate services in the preceding period. The Legislature's decision to not require an extension of services is rooted in over half a century of research reflecting poor outcomes for youth who languish in foster care. Petitioner does not dispute that the governing statute does not require an extension of services. Instead, Petitioner asks this Court to provide a remedy, citing due process concerns. However, because Section 352 allows for the juvenile court in its sound discretion to continue services based on an individualized determination, a parent's due process rights are protected. This Court must affirm that a juvenile court is not required to extend reunification efforts beyond the 18-month review when families have been denied adequate reunification services in the preceding review period.

Dated: June 10, 2022

/s/ *Samantha N. Stonework-Hand*
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CERTIFICATE OF WORD COUNT

I, Samantha N. Stonework-Hand, hereby certify under penalty of perjury under the laws of the State of California that, based on the word count of the computer program Microsoft Word with which this document was produced, the foregoing *Amicus Curiae* Brief, not including the cover sheet, the Application, the Tables of Contents, and Authorities, the Declaration of Service, or this Certificate, contains 5,273 words.

Executed on June 10, 2022, in Sacramento, California.

/s/ *Samantha N. Stonework-Hand*
Samantha N. Stonework-Hand

DECLARATION OF SERVICE

I, Frances Chen, declare, I am employed in the County of Alameda, State of California, over the age of 18 years and not a party to the within case. My business address is 1221 Oak Street, Suite 450, Oakland, CA 94612.

SERVICE VIA FIRST-CLASS U.S. MAIL

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is collected every day from a designated place for collection and deposited with the United States Postal Service the same day.

On this day, following ordinary business practices, I placed a true and correct hard copy of the document entitled **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF;** and **A*MICUS CURIAE* BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF REAL PARTY IN INTEREST ORANGE COUNTY SOCIAL SERVICES AGENCY** into a fully pre-paid envelope sealed and addressed as follows, for collection and mailing with the United States Postal Service.

Office of the Court Clerk
Hon. Antony C. Ufland, Judge
Appellate Division - Juvenile
341 The City Drive, South
Orange, CA 92868

Clerk, Court of Appeal
4th District, Division 3
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

SERVICE VIA TRUEFILING

In addition, on this same day, concurrent to electronic filing, I transmitted via court approved vendor TrueFiling a true and correct electronic copy in *Portable Digital Format*, of the same document to the recipients whose internet addresses are listed below. Transmission via electronic mail was consistent with the requirements of California Rules of Court, rules 8.44 and 8.78. My electronic service address is frances.chen@acgov.org.

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge.

Executed at Oakland, California, on June 10, 2022.

/s/ *Frances Chen*

Frances Chen